Nos. 14-449, 14-450

In the Supreme Court of the United States

KANSAS,

Petitioner,

v.

JONATHAN D. CARR,

Respondent.

KANSAS,

Petitioner,

v.

REGINALD DEXTER CARR, JR.,

Respondent.

On Writs of Certiorari to the Supreme Court of Kansas

JOINT APPENDIX VOL. 1

DEREK SCHMIDT
Attorney General of Kansas
JEFFREY A. CHANAY
Chief Deputy Attorney General
STEPHEN R. MCALLISTER
Solicitor General of Kansas
Counsel of Record
KRISTAFER R. AILSLIEGER
Deputy Solicitor General
NATALIE CHALMERS
Assistant Solicitor General
DAVID LOWDEN
Chief Assistant District Attorney
18th Kansas Judicial District
120 S.W. 10th Ave., 2nd Floor
Topeka, KS 66612
(785) 296-2215
steve.mcallister@trqlaw.com
Counsel for Petitioner
Kansas

SARAH E. JOHNSON
Counsel of Record
KANSAS APPELLATE DEFENDER OFFICE
700 Jackson, Suite 903
Topeka, KS 66603
(785) 368-6587
sjohnson@sbids.org
Counsel for Respondent
Jonathan D. Carr

NEAL KUMAR KATYAL
Counsel of Record
HOGAN LOVELLS US LLP
555 Thirteenth Street, N.W.
Washington, DC 20004
(202) 637-5600
neal.katyal@hoganlovells.com
Counsel for Respondent
Reginald Dexter Carr, Jr.

Petitions for Writ of Certiorari filed October 16, 2014
Petitions for Writ of Certiorari granted March 30, 2015

TABLE OF CONTENTS

VOLUME 1

Relevant Docket Entries in the Eighteenth Judicial District, District Court, Sedgwick County, Kansas, *The State of Kansas v. Reginald D. Carr*, Jr., No. 00 CR 2978 JA 1

Relevant Docket Entries in the Supreme Court of Kansas, *The State of Kansas v. Reginald D. Carr*, Jr., No. 90044 JA 7

Relevant Docket Entries in the Eighteenth Judicial District, District Court, Sedgwick County, Kansas, *The State of Kansas v. Jonathan D. Carr*, No. 00 CR 2979 JA 13

Relevant Docket Entries in the Supreme Court of Kansas, *The State of Kansas v. Jonathan D. Carr*, No. 90198 JA 18

Transcript of Motions Hearing, Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Nos. 00 CR 2978 and 00 CR 2979 (4/23/2002) JA 23
pp. 50-53, 62-67, 76 JA 25

Transcript of Pretrial Conference Motions, Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Nos. 00 CR 2978 and 00 CR 2979 (8/9/2002) JA 34
pp. 8-14, 103 JA 36

Transcript of Jury Trial Volume 40, Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Nos. 00 CR 2978 and 00 CR 2979 (11/4/2002) JA 45
Index JA 48
pp. 33, 44 JA 49

Transcript of Jury Trial Volume 41-A, Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Nos. 00 CR 2978 and 00 CR 2979 (11/5/2002) JA 52
Index JA 55
pp. 5-14, 16, 27-40, 46-56, 69-74, 79-82, 93-96, 107-121, 139 JA 57

Transcript of Jury Trial Volume 41-B, Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Nos. 00 CR 2978 and 00 CR 2979 (11/5/2002) JA 123
Index JA 126
pp. 14-16, 64-113, 143 JA 128

Transcript of Jury Trial Volume 42, Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Nos. 00 CR 2978 and 00 CR 2979 (11/6/2002) JA 185
Index JA 188
pp. 8-10, 35-37, 68-71, 76-84, 141-143, 198 JA 191

Transcript of Jury Trial Volume 43-A, Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Nos. 00 CR 2978 and 00 CR 2979 (11/7/2002) JA 215
Index JA 218
pp. 32, 34, 53-75, 80-94, 104-106, 124 JA 219

VOLUME 2

Transcript of Jury Trial Volume 43-B, Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Nos. 00 CR 2978 and 00 CR 2979 (11/7/2002) JA 263
Index JA 266
pp. 23-25, 33-35, 78-87, 102-105, 108-110, 149 JA 267

Transcript of Jury Trial Volume 44, Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Nos. 00 CR 2978 and 00 CR 2979 (11/8/2002) JA 292
Index JA 295
pp. 13-15, 40-49, 76-79, 121 JA 296

Transcript of Jury Trial Volume 45A, Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Nos. 00 CR 2978 and 00 CR 2979 (11/12/2002) JA 314
Index JA 316
pp. 4-6, 37-39, 56-59, 63-65, 108-111, 146 JA 317

Transcript of Jury Trial Volume 45B, Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Nos. 00 CR 2978 and 00 CR 2979 (11/12/2002) JA 333
Index JA 335
pp. 24-27, 36-38, 41-43, 142-153 JA 336

Transcript of Jury Trial Volume 46, Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Nos. 00 CR 2978 and 00 CR 2979 (11/13/2002) JA 356
Index JA 358
pp. 5-8, 58-60, 64-68, 98-102, 111-195, 199 JA 360

Transcript of Jury Trial Volume 47, Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Nos. 00 CR 2978 and 00 CR 2979 (11/14/2002) JA 446
pp. 3-16 JA 448

Verdict Forms Reginald D. Carr, Jr., Eighteenth Judicial District, District Court, Sedgwick County, Kansas, No. 00 CR 2978, (11/14/2002) JA 461

Verdict Forms Jonathan D. Carr, Eighteenth Judicial District, District Court, Sedgwick County, Kansas, No. 00 CR 2979, (11/14/2002) JA 477

The following opinions, decisions, judgments, and orders have been omitted in printing this joint appendix because they appear on the following pages in the appendices to the Petitions for a Writ of Certiorari:

Kansas v. Reginald Dexter Carr, Jr.

Appendix A Opinion of the Supreme Court of Kansas *(continued to Volume 2)* (July 25, 2014) . App. 1

Appendix A Opinion of the Supreme Court of Kansas *(continued from Volume 1)* (July 25, 2014) App. 222

Appendix B Jury Instructions Sentencing Phase in the Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Criminal Department Division 9 (November 18, 2002) App. 498

Appendix C Excerpts of Transcript of Jury Trial in the Eighteenth Judicial District, District Court, Sedgwick County, Kansas Criminal Department (November 13, 2002) App. 511

Kansas v. Jonathan D. Carr

Appendix A Opinion of the Supreme Court of Kansas (July 25, 2014) App. 1

Appendix B Opinion of the Supreme Court of Kansas in *State of Kansas v. Reginald Dexter Carr, Jr.* (No. 90,044) *(continued to Volume 2)* (July 25, 2014) . App. 67

Appendix B Opinion of the Supreme Court of Kansas in *State of Kansas v. Reginald Dexter Carr, Jr.* (No. 90,044)
(continued from Volume 1)
(July 25, 2014) . App. 288

Appendix C Jury Instructions Sentencing Phase in the Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Criminal Department Division 9
(November 18, 2002) App. 564

RELEVANT DOCKET ENTRIES

Eighteenth Judicial District, District Court, Sedgwick County, Kansas

No. 00 CR 2978

The State of Kansas v. Reginald D. Carr, Jr.

	DATE	CDE	DESCRIPTION
		* * *	
002	121800	CI	COMPLAINT/INFORMATION
		* * *	
023	010401	ACI	AMENDED COMPLAINT/ INFORMATION
		* * *	
228 229	022301	MOT	DEFT-OBJ TO JOINDER CASES FOR PRELIM, MOT TO SEPARATE CASES 03-02-01 AT 09:30 DIV 20
230	042001	MMO	MSR: OVERRULED 04-06-01 DIV 20 OWENS, CLARK
		* * *	
236 237 238 239	022301	RSP	DEFT REGINALD DEXTER CARR, JR'S OBJECTION TO JOINDER OF CASES FOR PRELIMINARY EXAMINATION, MOTION TO SEPARATE CASES FOR

	DATE	CDE	DESCRIPTION
			PURPOSES OF PRELIMINARY EXAMINATION & NOTICE OF INTENT TO FILE MOTION FOR SEVERANCE PURSUANT TO K.S.A. 2-2304
			* * *
500 501	062101	MOT	DEFT-MOT TO HEAR SEVERANCE MOT IN CAMERA & ALLOW W/O FACTUL 06-29-01 AT 09:30 DIV 20
502	092601	ODR	MSR: WITHDRAWN 09-21-01 DIV 09 CLARK, PAUL W.
			* * *
678 679 680	111901	MOT	DEFT-MOTION TO SEVER COUNTS IN COMPLAINT/ INFORMATION AND TO 11-30-01 AT 09:00 DIV 09 MSR: OVERRULED 01-10-02 DIV 09 CLARK, PAUL W.
			* * *
734 735 736	011702	NOT	NOTICE OF AGGRAVATING CIRCUMSTANCES FILED BY NOLA FOULSTON, DISTRICT ATTY/ REC'D 1-17-02 9:04 A.M. BY JUDGE PAUL W CLARK DIV 9

	DATE	CDE	DESCRIPTION
		* * *	
781 782 783	011102	M	STATE'S RESPONSE TO DEFT'S MOTION TO SEVER COUNTS IN COMPLAINT/ INFORMATION AND ORDER SEPARATE TRIALS FILED BY KIM T PARKER, ASST DA
		* * *	
871	032202	MOT	DEFT-MOTION TO SEVER TRIAL FROM THAT OF THE CODEFENDANT
872	050602	MMO	MSR: OVERRULED 04-23-02 DIV 09 CLARK, PAUL W.
873 874	032202	M	DEFT'S MEMORANDUM IN SUPPORT OF HIS MOTION/COPY PROVIDED TO STATE (FILED UNDER SEAL)
		* * *	
876 877	032202	M	DEFT'S SUPPLEMENT TO HIS MEMORANDUM IN SUPPORT OF HIS MOTION COPY NOT PROVIDED TO STATE/ SUBMITTED TO COURT UNDER SEAL
		* * *	

	DATE	CDE	DESCRIPTION
934 935	041102	ODR	ORDER RE: MOTION TO SEPARATE CASES FOR PURPOSES OF PRELIM EXAM (4-19-01) OVERRULED S/C OWENS II
* * *			
052	053002	ODR	ORDER RE: SEVERANCE OF TRIAL (4-22-02) OVERRULED S/PW CLARK
* * *			
083 084 085	053002	ODR	ORDER RE: DEFT'S MOTION TO SEVER COUNTS IN COMPLAINT/INFORMATION & TO ORDER SEPARATE TRIALS (1 10 02) OVERRULED S/PW CLARK
* * *			
562	111802	IN	DEFT'S PROPOSED JURY INSTRUCTIONS FILED BY JOHN VAL WACHTEL
563	111802	IN	INSTRUCTIONS BEFORE EVIDENCE GIVEN BY JUDGE CLARK
564	111802	JIN	INSTRUCTIONS GIVEN BY JUDGE PAUL W CLARK
* * *			

	DATE	CDE	DESCRIPTION
568	111802	VER	VERDICT GUILT PHASE S/W BRILEY, PRESIDING JUROR
569	111802	JIN	JURY INSTRUCTIONS - SENTENCING PHASE S/PW CLARK
570	111802	VER	VERDICT SENTENCING PHASE S/W BRILEY, PRESIDING JUROR
571 572 573 574	111502	JEJ	JOURNAL ENTRY OF JUDGMENT (11-15-02) DEATH SENTENCES (4) ALL CONSECUTIVE PLUS LIFE IMPRISONMENT - HARD 20, PLUS 570 MONTHS/ JAIL TIME CREDIT 702 DAYS/ DEFT PAY COSTS & DFBF/ SHF TRANSPORT DEFT TO SECY OF CORRECTIONS S/PW CLARK
* * *			
576 577 578	112502	NAP	NOTICE OF APPEAL, IN FORMA PAUPERIS, DEFT APPEALS FROM HIS CONVICTION, JUDGMENT, SENTENCE, INCLUDING ALL ADVERSE RULINGS COMMITTED TO THE SUPREME COURT, FILED

	DATE	CDE	DESCRIPTION
			BY JOHN VAL WACHTEL
* * *			

RELEVANT DOCKET ENTRIES

Kansas Supreme Court

No. 90044

State of Kansas v. Reginald Dexter. Carr, Jr.

Date	Description
	* * *
25-JUL-14	PUBLISHED OPINION / 421 pages - $105.25
25-JUL-14	JUDGMENT DOCKETED- OPINION FILED / Affirmed in part,reversed in part,sentence of death vacated &remanded-Per Curiam
15-JUL-14	RULE 6.09(B) LETTER / REGINALD DEXTER CARR JR
03-JAN-14	ORDER BY THE COURT / Noted-Response to motion to supplment oral argument-Carr
03-JAN-14	ORDER GRANTING MOTION / to supplement oral argument
26-DEC-13	RESPONSE- / Motion to Supplement Oral Argument - REGINALD DEXTER CARR JR
20-DEC-13	MEMO MOTION / Motion to Supplement Oral Argument State of Kansas
04-DEC-13	MEMO NOTATION / 6.09(b) Letter - REGINALD DEXTER CARR JR

27-NOV-13	ORDER - GRANTING MOTION / to file Notice of Additional Case Aurthority that excceds 350 words - Carr
14-NOV-13	MEMO MOTION / Permission to File S.C. Rule 6.09 (b) Exceeding 350 Words - Reginald D.Carr Jr.
07-OCT-13	AMENDED BRIEF / Resp to Aple 2nd Sup Brf REGINALD DEXTER CARR JR
03-OCT-13	SUPPLEMENTAL BRIEF / (Resp to Aplt's 3rd Supp Brf) State
03-OCT-13	ORD GRANTING MOT TO FILE BRIEF INSTANTER / (Reply br to Aplnt's 3rd Supp Br) - State of Kansas
02-OCT-13	MOTION TO FILE BRIEF INSTANTER / STATE
02-OCT-13	MEMO NOTATION / Response to 3rd Sup Brf HOLD - (OOT) - STATE
* * *	
30-SEP-13	SUPPLEMENTAL BRIEF / Response to Aple 2nd Supp Brf REGINALD DEXTER CARR JR
16-SEP-13	SUPPLEMENTAL BRIEF / STATE OF KANSAS
12-SEP-13	SUPPLEMENTAL BRIEF / REGINALD DEXTER CARR JR
01-JUL-13	ORDER CONTINUED / Due 10/1/2013 Parties responses to supplemental brief - 10 page limit. No exts.

01-JUL-13	ORDER BY THE COURT / Due 9/16/2013 Parties supplemental brief - 20 page limit. No exts.
01-JUL-13	CAUSE SCHEDULED FOR HEARING / Set for hearing 12/17/2013 @ 9:00 a.m. (60 mins)
25-MAR-13	SUPPLEMENTAL BRIEF / State
17-MAR-13	RECORD RECEIVED CLERK, DISTRICT COURT / 204 Vols (14 Boxes for a total of 226 items) SEDGWICK COUNTY
* * *	
20-FEB-13	SUPPLEMENTAL BRIEF / REGINALD DEXTER CARR JR - Aple Supp Brf Due 03/25/2013
* * *	
22-JAN-13	ORDER CONTINUED / Granted & Noted-Motion to file response OOT to motion to re-open briefing
22-JAN-13	ORDER - GRANTING MOTION / to re-open briefing. Aplt supp br due 2/21/2013, limit 5 pgs.Aple supp br 5 pgs
07-JAN-13	MEMO NOTATION / Response To Motion To Re-Open Briefing (HOLD) File (Permission) - STATE
07-JAN-13	MEMO MOTION / File Response OOT (Re: Re-Open Briefing) STATE OF KANSAS

21-DEC-12	MEMO MOTION / Motion To Re-Open Briefing - REGINALD DEXTER CARR JR
17-DEC-12	REPLY BRIEF / REGINALD DEXTER CARR JR
01-OCT-12	BRIEF RECEIVED / Vol I & II - State
13-SEP-12	ORDER - GRANTING MOTION / to file brief in excess of 100 pgs. Appellee brief not to exceed 385 pgs - STATE
07-SEP-12	MEMO MOTION / for Aple Brf to Exceed 100 pages - State
16-DEC-11	MEMO ORDER / Due 10/1/2012 Br-State of Kansas, final ext. Any reply br due 12/17/2012.
06-DEC-11	MEMO ORDER / 12/14/2011 @ 9:15 a.m. telephone status conference with counsel
24-OCT-11	ORD. GRANTING EXT. OF TIME. TO FILE BRF. / Due 1/9/2012 Br-State of Kansas
11-OCT-11	MOT. FOR EXT. OF TIME TO FILE BRIEF / 8th Motion - State of Kansas
* * *	
16-OCT-09	SUPPLEMENTAL BRIEF / REGINALD DEXTER CARR JR APLE BRF DUE 01/14/2010
* * *	

17-AUG-09	MEMO MOTION / TO FILE SUPP BRIEF REGINALD DEXTER CARR JR
	* * *
11-MAY-09	BRIEF RECEIVED / & VOL II OF BRF W/APPX (3 BOOKS) REGINALD DEXTER CARR JR-APLE BRF DUE 08/12/2009
07-MAY-09	MEMO ORDER- GRANTING MOTION / TO FILE BRIEF IN EXCESS OF 100 PAGES (410 PGS) NOTED-RESP & REPLY
	* * *
04-MAY-09	RESPONSE- / TO MTN TO EXCEED 100 PAGE BRF - STATE
23-APR-09	MEMO MOTION / TO FILE BRIEF IN EXCESS OF 100 PAGES REGINALD DEXTER CARR JR
19-MAR-09	ORD. GRANTING EXT. OF TIME. TO FILE BRF. / DUE 5/11/2009 BR-REGINALD CARR
09-FEB-09	MOT. FOR EXT. OF TIME TO FILE BRIEF / 23RD MOTION REGINALD DEXTER CARR JR
	* * *
20-MAY-03	MEMO NOTATION / DUE 08/18/2003 BRIEF OF APPELLANT
	* * *
21-JAN-03	ORDER APPOINTING COUNSEL

21-JAN-03	JOURNAL ENTRY / REGINALD DEXTER CARR JR
21-JAN-03	NOTICE OF APPEAL FILED / REGINALD DEXTER CARR JR
21-JAN-03	DOCKETING STATEMENT / REGINALD DEXTER CARR JR
21-JAN-03	ORD. GRANTING MOT. TO DOCKET OUT OF TIME / BY REGINALD DEXTER CARR, JR.
	* * *
08-JAN-03	MOTION TO DOCKET APPEAL OUT OF TIME / REGINALD DEXTER CARR JR

RELEVANT DOCKET ENTRIES

Eighteenth Judicial District, District Court, Sedgwick County, Kansas

No. 00 CR 2979

The State of Kansas v. Jonathan D. Carr

	DATE	CDE	DESCRIPTION
		* * *	
002	121800	CI	COMPLAINT/INFORMATION
		* * *	
044	010401	ACI	AMENDED COMPLAINT/ INFORMATION
		* * *	
181 182	041701	NOT	NOTICE OF INTENT TO REQUEST SEPARATE SENTENCING PROCEEDING FILED BY NOLA FOULSTON
		* * *	
356 357 358	011702	NOT	NOTICE OF AGGRAVATING CIRCUMSTANCES FILED BY NOLA FOULSTON, DISTRICT ATTORNEY/ REC'D 1-17-02 @ 9:05 A.M., BY JUDGE PAUL W CLARK DIV 09
		* * *	

	DATE	CDE	DESCRIPTION
513 514	041102	ORD	ORDER RE: MOTION TO SEPARATE CASES FOR PURPOSES OF PRELIM EXAM (4-19-01) OVERRULED S/C OWENS II
		* * *	
585	053002	ODR	ORDER RE: SEVERANCE OF TRIAL (4-22-02) OVERRULED S/PW CLARK
		* * *	
613 614	053002	ODR	ORDER RE: MOTION TO SEVER COUNTS IN COMPLAINT/INFORMATION & TO ORDER SEPARATE TRIALS (1 10 02) OVERRULED S/PW CLARK
		* * *	
670 671	062602	ODR	ORDER FOR TRANSCRIPT MOTION TO SEVERE CONDUCTED ON 4-23-02 S/PW CLARK
		* * *	
682 683	072602	IN	PROPOSED JURY INSTRUCTIONS FILED BY MARK MANNA, DEATH PENALTY DEFENSE UNIT (ACCUSED FILING #51)

	DATE	CDE	DESCRIPTION
* * *			
685 686	073002	MOT	DEFT-2ND MOTION FOR SEVERANCE (ACCUSED FILING #56) 08-09-02 AT 08:45 DIV 09
687 688	091702	MMO	MSR: OVERRULED 08-09-02 DIV 09 CLARK, PAUL W XXX
689 690	080802	M	RESPONSE TO DEFT'S MOTION TO SEVER TRIAL FILED BY KIM PARKER DEP DA
* * *			
987 988	092502	ODR	ORDER RE: DEFT'S 2ND MOTION FOR SEVERANCE (8-9-02) OVERRULED S/PW CLARK
* * *			
042 043	111802	IN	DEFT'S PROPOSED JURY INSTRUCTIONS FOR SECOND PHASE FILED BY RON EVANS, DEATH PENALTY DEFENSE UNIT
044	111802	IN	INSTRUCTIONS BEFORE EVIDENCE GIVEN BY JUDGE PAUL W CLARK

	DATE	CDE	DESCRIPTION
045	111802	JIN	INSTRUCTIONS BY JUDGE PAUL W CLARK
		* * *	
049	111802	VER	VERDICT GUILT PHASE S/W BRILEY, PRESIDING JUROR
050	111802	JIN	JURY INSTRUCTIONS - SENTENCING PHASE S/PW CLARK
051	111802	VER	VERDICT SENTENCING PHASE S/W BRILEY, PRESIDING JUROR
052 053 054 055 056	111502	JEJ	JOURNAL ENTRY OF JUDGMENT (11-15-02) TTL PERIOD OF CONFINEMENT- DEATH SENTENCES (4) ALL CONSECUTIVE PLUS LIFE IMPRISONMENT - HARD 20, PLUS 492 MONTHS/ JAIL TIME CREDIT 702 DAYS/ DEFT PAY COSTS & DFBF/ SHF TRANSPORT DEFT TO SECY OF CORRECTIONS S/PW CLARK
		* * *	
059 060 061	112102	NAP	NOTICE OF APPEAL, DEFT APPEALS FROM ANY AND ALL ADVERSE RULINGS OF

	DATE	CDE	DESCRIPTION
			THE TRIAL COURT TO THE SUPREME COURT OF KANSAS, FILED BY RONALD EVANS
* * *			

RELEVANT DOCKET ENTRIES

Kansas Supreme Court

No. 90198

State of Kansas v. Jonathan D. Carr

Date	Description
* * *	
25-JUL-14	PUBLISHED OPINION / 57 pages - $14.25
25-JUL-14	JUDGMENT DOCKETED- OPINION FILED / Affirmed in part,reversed in part,sentence of death vacated,&remanded-Per Curiam
03-JAN-14	ORDER GRANTING MOTION / to supplement oral argument by State of Kansas
20-DEC-13	MEMO MOTION / Motion to Supplement Oral Argument State of Kansas
02-DEC-13	RULE 6.09(B) LETTER / JONATHAN D CARR
03-OCT-13	SUPPLEMENTAL BRIEF / (Resp to Aplt's 2nd Supp Brf) - State
03-OCT-13	ORD GRANTING MOT TO FILE BRIEF INSTANTER / (Reply Br to Aplnt's 2nd Supp Br) - State of Kansas
02-OCT-13	MOTION TO FILE BRIEF INSTANTER / STATE OF KANSAS

02-OCT-13	MEMO NOTATION / Response to 2nd Sup. Brf HOLD - (OOT) - STATE
01-OCT-13	SUPPLEMENTAL BRIEF / (Response to Aple Supplemental Brief) - JONATHAN D CARR
16-SEP-13	SUPPLEMENTAL BRIEF / STATE OF KANSAS
13-SEP-13	SUPPLEMENTAL BRIEF / JONATHAN D CARR
* * *	
01-JUL-13	ORDER CONTINUED / Due 10/1/2013 Parties responses to supplemental brief - 10 page limit. No exts.
01-JUL-13	ORDER BY THE COURT / Parties supplemental brief due 9/16/2013 20 page limt. No exts.
01-JUL-13	CAUSE SCHEDULED FOR HEARING / Set for hearing 12/17/2013 @ 1:30 p.m. (60 mins)
22-AUG-12	RECORD RECEIVED CLERK, DISTRICT COURT / 225 VOLUMES (16 BOXES), SEDGWICK COUNTY
04-JUN-12	REPLY BRIEF / JONATHAN D CARR
02-MAY-12	MEMO ORDER-DENYING MOTION / to file supplemental brief on present showing - Jonathan Carr
02-APR-12	BRIEF RECEIVED / State
20-MAR-12	MEMO ORDER- GRANTING MOTION / to file Aple brief in excess of 100

	pages. State's brief not to exceed 359 pgs.
15-MAR-12	MEMO MOTION / Permission To File Death-Penalty Brief In Excess Of 100 Pages - STATE OF KANSAS
13-MAR-12	MEMO MOTION / To File Supplemental Brief JONATHAN D CARR
16-DEC-11	MEMO ORDER / Due 4/2/2012 BR-State of Kansas, Final ext. Any reply brief due 6/4/2012
06-DEC-11	MEMO ORDER / 12/14/2011 @ 9:00 a.m. telephone status conference with counsel
24-OCT-11	ORD. GRANTING EXT. OF TIME. TO FILE BRF / Due 1/9/2012 Br-State of Kansas
12-OCT-11	MOT. FOR EOT TO FILE BRIEF (OUT OF TIME) / 9th Motion State of Kansas
* * *	
03-SEP-09	SUPPLEMENTAL BRIEF / JONATHAN D CARR
03-SEP-09	MEMO ORDER- GRANTING MOTION / TO FILE SUPP BRIEF - JONATHAN CARR. SUPP BR DUE 10/19/09. NOT TO EXCEED 20 PGS.
26-AUG-09	MEMO NOTATION / APLT SUPP BRF HOLD (PERMISSION) JONATHAN D CARR

18-AUG-09	MEMO MOTION / TO FILE SUPP BRIEF - JONATHAN CARR
15-JUL-09	BRIEF RECEIVED / 2 VOLS JONATHAN D CARR APLE BRF DUE 10/16/2009
06-JUL-09	MEMO ORDER- GRANTING MOTION / TO EXCEED BRF PG LIMITATIONS-JONATHAN CARR. APLT BRF NOT TO EXCEED 400 PGS.
01-JUL-09	MEMO MOTION / TO EXCEED BRF PG LIMITATIONS JONATHAN D CARR
08-JUN-09	ORD. GRANTING EXT. OF TIME. TO FILE BRF / DUE 7/15/09 BR JONATHAN CARR. FINAL EXT.
21-MAY-09	MOT. FOR EXT. OF TIME TO FILE BRIEF / 20TH MOTION - JONATHAN D CARR
* * *	
19-MAY-03	MEMO NOTATION / DUE 08/18/2003 BRIEF OF APPELLANT
* * *	
21-FEB-03	NOTICE OF APPEAL FILED / JONATHAN D CARR
21-FEB-03	DOCKETING STATEMENT / JONATHAN D CARR

21-FEB-03	ORD. GRANTING MOT. TO DOCKET OUT OF TIME / BY JONATHAN D. CARR
10-FEB-03	MOTION TO DOCKET APPEAL OUT OF TIME / JONATHAN D CARR

IN THE EIGHTEENTH JUDICIAL DISTRICT DISTRICT COURT, SEDGWICK COUNTY, KANSAS CRIMINAL DEPARTMENT

Case No. 00 CR 2978
00 CR 2979

[Dated April 23, 2002]

STATE OF KANSAS, Plaintiff,	)
vs.	)
REGINALD DEXTER CARR, JR. and JONATHAN D. CARR, Defendants.	)

MOTIONS HEARING

PROCEEDINGS had and entered of record on April 23, 2002, before the Honorable Paul Buchanan, Judge of Division 15, Eighteenth Judicial District, Sedgwick County, Kansas.

APPEARANCES:

For the Plaintiff:
Nola Foulston
Kim Parker
District Attorneys Office
535 North Main
Wichita, Kansas 67203

For Defendant
Jonathan D. Carr:
Ron Evans
Mark A. Manna
Death Penalty Defense Unit
112 SW 6th Street - Suite 211
Topeka, Kansas 66611

For Defendant
Reginald Carr, Jr:
John V Wachtel
Klenda, Mitchell, Austerman
301 North Main
Wichita, Kansas 67203

For Defendant
Reginald Carr, Jr:
E. Jay Greeno
Attorney at Law
250 North Water - Suite 215
Wichita, Kansas 67202

For KWCH, Wichita
Eagle and KAKE:
William P Tretbar
Lyndon W. Vix
Fleeson, Gooing, Coulson
125 North Market Suite 1600
Wichita, Kansas 67202

SHARON WILLIAMS, CSR, RPR

* * *

[p.50]

Mr. Evans in how the Court should consider that. I don't think the state of Kansas is entitled to know what our theory of defense is at this point in time. It's our theory of the defense and even if they don't agree with it, it's still our theory of the defense. It's the evidence that we believe that we're going to present in this particular case and it's going to be antagonistic to the evidence of Jonathan Carr. Whether they would like to know what it is and have an opportunity to rebut it, this is not the place for that. The place to rebut our defense is at the jury trial in this particular matter. I would ask the Court to consider it but please do not release that to the prosecution. Thank you.

THE COURT: Thank you. Mr. Evans.

MR. EVANS: Your Honor, I think the motion speaks for itself and I'll join most of what Mr. Greeno said in support of severance. Judge, there is no way if this case proceeds the way it is now with these brothers being tried together that I cannot prosecute Reginald Carr. That's true in the first stage, but it's absolutely true in the second stage. The

[p.51]

legislature saw fit to pass a statutory mitigator talking about roles in the offense providing that it is a statutory mitigator in the state of Kansas whether -- if the defendant played a relatively minor role in the offense.

We're going to have to get into roles of the offense if this case gets to the second stage. There is no way I cannot -- As Jonathan's advocate, as much as I might not want to hurt his brother, there is no way as Jonathan's advocate I can't get into Reginald's prison record, why was he sent to prison, was he accused of any violent attacks while he was in prison. There is no way I can't put relatives on the stand to talk about Reginald versus Jonathan, who was the leader, who seemed to follow who around. We're going to get in -- There is no way that I cannot at least try to get into that. You can try to stop me, but the second stage, with the state of affairs in Kansas, I don't think that -- I think that would certainly be reversed if we were prevented from getting into things like that. So, I have to be Reginald's prosecutor. That adds another prosecutor in the room. There is no way that

[p.52]

that doesn't prejudice Reginald.

Now, I say it from this standpoint because I know what I'm going to do to Reginald, and I'll bet a month's pay that Mr. Greeno and Mr. Wachtel are going to be doing the same thing to Jonathan, so, I mean, that is certainly going to prejudice Jonathan's right to a fair trial. They're -- We're going to get into things on Reginald that there's no way the State would get to introduce into evidence against him if he was sitting there by himself. I mean, there's no way the State would get into his prison record. It's not a violent conviction he was sent to prison for. There's no way they would get in

his prison record, record in prison. That doesn't go to any of the statutory aggravators.

There's no way that they would get into talking to the grandmother of these young men about who did what and how that -- how that affected the other defendant but for the fact that they were joined in this trial. So, there are all sorts of things that there's going -- that you're going to have to address and I don't know how you address them. I don't know how you let us have our bite of the apple without

[p.53]

creating reversible error for Reginald Carr and vice versa, so I think severance is absolutely necessary on that ground alone. We've set out some other grounds. I'll answer any questions the Court has.

THE COURT: I have none at this time.

MR. EVANS: I have nothing further.

THE COURT: For the State.

MS. FOULSTON: Thank you, Your Honor. Again, it's a day of reflection, Your Honor, when you listen to the arguments of counsel, not only counsel for the media that were here but also counsel for the defense, for Mr. Jonathan Carr and for Reginald Carr, and it makes the State stand back and say what is the most important thing that we can do in this case to preserve and protect the rights of the victims, the state of Kansas and preserving and protecting the rights of these defendants. In the event that this case results -- does result in a

conviction, I want to assure that this has been done in the most constitutional and fair manner, looking at all of the things that are necessary components, to assure that there is a fair trial for both defendants in this case and

* * *

[p.62]

let's do rebuttal and then I'll ask everybody to respond to the question. The question is going to be let's say, just for the sake of argument, that Mr. Reginald Carr is being tried by himself. Could you put on Ms. Adams and give her full testimony to show the whole transaction, not for the truth of the matter stated but simply what happened to the coat, to the white car, what happened to these two people? That's going to be the two questions I'm going to ask of everybody.

MS. FOULSTON: Your Honor, in that Tronda Adams testimony there are about three statements that are placed in there by counsel. There is no Bruton problem or issue with her, what she visualized, what she saw, what her mother saw, the way the defendant was clothed. None of those flow to the Bruton issues. They're a statement that's made, three statements that are quoted by counsel. These three statements in and of themselves, when I reviewed the file and the transcript I thought well, I can accommodate you. I don't need -- At the expense of severing these trials, I can carve my testimony and instruct a witness to

[p.63]

leave out those statements so we avoid Bruton problems. So, if that's what's the problem is, I can take care of that so you don't need to sever, because I can do that and get a full and complete testimony in my belief. Yeah, I'd like to have that information in but not at the expense of a Bruton issue.

THE COURT: The question I'm going to ask is could you, though, in a single trial with Mr. Reginald Carr present that evidence as part of what's sometimes called loosely res gestae but show the overall transaction?

MS. FOULSTON: Not if there's an objection as to -- It could be within the res gestae, Your Honor. Yes, it could be presented.

THE COURT: Think about that. I'm going to ask everybody that question on their rebuttal. Do you have rebuttal, Mr. Wachtel? I'm sorry. Mr. Wachtel --

MR. WACHTEL: I'm remaining silent, Your Honor. Thank you.

THE COURT: Excuse me. Mr. Greeno, do you have rebuttal?

MR. GREENO: Yes, I do. Miss Foulston may not want to elicit those statements from

[p.64]

Tronda Adams, but I am sure Mr. Evans is going to want to in his trial because they are -- they exculpate Mr. Jonathan Carr.

A couple things come to mind. I know that Mr. Gessler did that. They had two juries in that trial and there's the affidavit that he spoke about. I don't know how they do that in California. I really do not know how they do that. That was the first time I ever heard of it. But the things that come to mind is that we are dealing with a statute, Kansas death penalty, that is in its infancy. We've had one Kansas Supreme Court case come down in an opinion and I know of no statutory authority for having -- trying codefendants with two juries in one trial. I would be -- We would not be doing ourselves, the defendants, the victims, the states of Kansas any benefit in this case if we try a case that is going to get reversed on a technical basis, because there's no statutory authority for it and no guidance from any of the appellate courts for the Court in this particular case.

On a more practical level, if I was a juror in one of these cases, I can see where I

[p.65]

would be very troubled when I was asked to leave the courtroom because some amount of evidence was going to be coming in. And I don't know what the Court -- how the Court would explain that, but if I was a juror and I was asked to leave during the course of a trial and I knew the other jury was not going to be asked to leave, I would be very concerned about what evidence would be coming in and how I'm supposed to make any judgment. And I know -- I've talked about this earlier - the Court would instruct them that what's going on in here is none of your business or not for your consideration

or not for your concern, but I think as human beings we do that. The logistics of it concerns me. I think that we're going to have jurors that are going to be upset because they're going to be leaving the courtroom. It's going to be like musical chairs in here.

Those are just a few of the things that I can think of along with the other -- I don't know if there's any Bruton problems that we may encounter in this particular case. You know, I just don't think that -- I think we're taking some very dangerous steps if we start

[p.66]

taking steps nobody else has taken before in the state of Kansas and -- because we don't know how it's going to affect these trials or how the trials are going to take place. I would just say, you know, we need to stick with what we've done before and what the law has addressed.

If the Court feels there's a basis and I believe there is certainly a basis - for the severance of these trials, the Court needs to sever them and they need to get two trials. If there's a problem with the pretrial publicity, there's a problem with the pretrial publicity and that can be dealt with in voir dire or a motion for change of venue or however that takes place. But I think given the state of the law in the state of Kansas if we start trying to implement radical and new procedures that haven't been approved by the Kansas Supreme Court we may well be getting in trouble. Thank you.

THE COURT: Thank you. Mr. Evans.

MR. EVANS: Your Honor, I usually need a little bit of time to cogitate on things. Perhaps that speaks to my intelligence, but this was dropped on us here in the last 20 minutes.

[p.67]

I'm not sure what Miss Foulston is proposing. I get the concept of two juries. I can get my head around that, but how would we pick those two juries. Would they both -- so, Mr. -- So, they would give an opening statement to both juries and then the first -- the Reginald jury would file out and then Jay Greeno or Val Wachtel would give their opening and then Jonathan's jury would come in. I don't know.

I've got a lot of questions. I don't -- I'm not opposed to this. I mean, I appreciate counsel conceding, as she appears to concede, that a severance or some sort of prophylactic measure is needed in this case. I certainly welcome that concession and I don't want to reject two juries just out of hand, but perhaps if Miss Foulston and Miss Parker could give a written proposal and give us a few days at least to look at it. I can't say that it's not to Jonathan's advantage. I certainly don't think it's to his advantage to just reject it out of hand.

So, I guess what I would like to see is something in writing as to exactly what they are proposing and how it would work from the

* * *

[p.76]

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

CERTIFICATE

I, Sharon M. Williams, a Certified Shorthand Reporter, under and by virtue of the laws of the State of Kansas, and a regularly appointed, qualified and acting official reporter of the Eighteenth Judicial District of the State of Kansas, do hereby certify that as such official reporter, I was present at and reported in machine shorthand the above and foregoing proceedings in Case No. 00 CR 2978 and 00 CR 2979, heard on April 23, 2002.

That thereafter, upon written order by the attorneys for the Defendants, I personally prepared the foregoing transcript, by means of computer-aided transcription, and that said transcript is a true and correct copy of my shorthand notes, all to the best of my knowledge and ability.

SIGNED, OFFICIALLY SEALED, and DELIVERED this 4th day of March, 2003.

_____
Sharon M. Williams, CSR, RPR

SHARON WILLIAMS, CSR, RPR

IN THE EIGHTEENTH JUDICIAL DISTRICT DISTRICT COURT, SEDGWICK COUNTY, KANSAS CRIMINAL DEPARTMENT

Case No. 00 CR 2978
Case No. 00 CR 2979

[Dated August 9, 2002]

THE STATE OF KANSAS,	)
	)
Plaintiff,	)
	)
vs.	)
	)
REGINALD D. CARR,	)
	)
Defendant.	)
	)
THE STATE OF KANSAS,	)
	)
Plaintiff,	)
	)
vs.	)
	)
JONATHAN D. CARR,	)
	)
Defendant.	)
	)

PRETRIAL CONFERENCE
MOTIONS

PROCEEDINGS had before the Honorable Paul W. Clark, Judge of Division 9 of the District Court of

Sedgwick County, Kansas, at Wichita, Sedgwick County, Kansas, on the **9th day of August, 2002.**

APPEARANCES

PLAINTIFF:
Ms. Nola Foulston
District Attorney
Ms. Kim Parker
Deputy District Attorney
Sedgwick County Courthouse Annex
535 North Main Street
Wichita, Kansas – 67203

DEFENDANT REGINALD D. CARR (Appearing in person):
Mr. Jay E. Greeno
Of Counsel, REALS & WEBER
Attorneys at Law
Suite 215
250 North Water
Wichita, Kansas – 67202
and
Mr. John V. Wachtel
KLENDA, MITCHELL, AUSTERMAN & ZUERCHER, LLC
1600 Epic Center
301 North Main
Wichita, Kansas – 67202

DEFENDANT JONATHAN D. CARR (Appearing in person):
Mr. Ronald F. Evans
Mr. Mark A. Manna
Attorneys At Law
Death Penalty Defense Unit

Suite 302
112 Southwest Sixth Street
Topeka, Kansas – 66603

SANDRA J. BERGER, CSR
Official Court Reporter

* * *

[p.8]

THE COURT: Nobody has said --

MR. EVANS: I think so.

THE COURT: Mr. Wachtel, same question.

MR. WACHTEL: I'm sorry, Your Honor, I utterly missed the question.

THE COURT: Are you satisfied you know who the witnesses are that they intend to call?

MR. WACHTEL: I'm satisfied that I have the names. I'm not -- as I spoke with Ms. Foulston just briefly, I'm not satisfied I know who a couple of these people are. And perhaps by taking this to the heel of the docket I can resolve that for you.

THE COURT: Other than those listed on today's motion to endorse, are you satisfied you know what it is all the witnesses have to say?

MR. WACHTEL: Yes, I think I am.

THE COURT: Okay. Thank you.

We've already covered exhibits and motions for dismissal, judgments on pleadings, or summary judgment. That would be include, I believe, Mr. Jonathan Carr's renewed motion for discovery. Are we ready to take that up at this time?

MR. EVANS: I am, Judge.

MS. PARKER: Yes, Your Honor.

THE COURT: Okay. Would you do your

[p.9]

argument from the lectern over there, if you would, please. See how that works.

(Off-the-record discussion.)

MR. EVANS: I thought I heard you at the last time the severance matter was discussed, if not invite us, then, certainly allow us to bring it back up, so we filed a second motion for severance, Judge.

THE COURT: I did.

MR. EVANS: And I have -- have you got a copy of it?

THE COURT: I did not. It's in the file?

MR. EVANS: Yes, sir. And frankly, Judge, we -- the argument is the same. I think we bolstered the argument a little bit with some additional authority. But the argument for severance is in essence the same argument we made last time.

I think there are three reasons why this case must be severed. The State -- the cases that consider severance in Kansas are all noncapital cases, but they are all consistent in listing five categories.

Number one, the defendants have an antagonistic defense. Judge, the clearest way I can put Jonathan Carr's defense right now is he denies categorically his participation in the events he's

[p.10]

accused of. His defense will be he was in Tronda Adams' house early the morning of December 15th. His big brother Reggie brought items over, cash, a ring, left those items with him. He was not told of the crime. He did not participate in the crime. He is prepared to present an alibi to the jury.

Now, that is as clear as I can make our defense. I can't think of a way to put it that doesn't put the State on notice of where we're going. I will be glad to answer any questions if I can answer them if the Court doesn't think that sufficiently speaks to the allegation of what our defense is.

Now, is that defense antagonistic to Reginald Carr's? Judge, I don't know what his defense is. I didn't hear an assertion of Reginald Carr's defense in open court when we last brought this matter up. It is my memory that Mr. Greeno told you that -- and had handed you previously -- or previously filed under seal allegations and assertions of what Reginald's defense would be. I didn't get a copy of that. I don't have access to that, Judge. I don't -- certainly don't have access to Reginald Carr. I can't go interview him in the jail without losing my license to practice. I can talk to his lawyers, and I talked to his lawyers, and I told his lawyers, Mr. Greeno and

[p.11]

Mr. Wachtel, both, this is our defense. Does your defense -- can you tell me what your defense is? And it's my understanding they decline to do so. They still decline to do so. Does your defense conflict with

Jonathan's defense to the extent -- I think I asked them this question as specifically as I could, Judge. Does it conflict with Jonathan's defense to the point that Reginald's defense is irreconcilable with Jonathan's defense? And are the defenses mutually exclusive? I take those terms to mean that the jury could not believe both defenses if the defenses are in fact against each other. I think that is the essence of the antagonistic defense. That is certainly the essence of antagonistic defense that should get defendants a severance.

I think I've done as much as I can for the Court. And I think the first prong of any one of these five should get a severance, I think certainly the antagonistic defense is here and would require a severance in and of itself.

But the second reason for a severance, important evidence in favor of one of the defendants would be admissible in a separate trial, would not be allowed in a joint trial. Well, do we have that here? Judge, we clearly do. You're not going to find much

[p.12]

case law -- in fact, you're not going to find any case law in Kansas as to this -- this prong and the way it relates to this case because capital cases -- since '94, since the death penalty has come back in Kansas, I don't think this has ever been tried. I don't think joint trials have ever been sought of multi-defendant cases in a capital case in Kansas.

But important evidence for one would be admissible if they were separated but would not be allowed in a joint trial. We certainly have that here,

Judge. I mean, you know this because you ruled on this motion last week and it was Mr. Greeno, Mr. Wachtel's motion to limine us and the State from introducing Reginald's prison record, introducing Reginald's prior -- introducing bad acts of Reginald.

Now, in all candor, Your Honor, I don't know any way around this. We get to the second stage of this case, I'm not saying we're going to, but if we do, we get to the second stage of this case, you've got Reginald sitting next to his brother Jonathan, counsel wants to introduce evidence against Reginald about his bad character, about his propensity for violence, about what he did in prison, about his conviction. I don't know of any -- and I haven't seen anything cited by the State that says this is

[p.13]

inadmissible. I can't find any authority that makes this inadmissible, especially when you look at the relaxed state of the evidence code.

When we get to the second stage, the evidence code doesn't apply. This evidence, would it be relevant in favor of Jonathan? Absolutely. It goes to two statutory mitigators. It goes to Jonathan's role in the offense. *Woodson versus North Carolina* says that the jury must -- must consider the defendant's individual degree of culpability. It has to be admissible for Jonathan. Judge, that is a red flagger, or that will get him a new trial, in all candor. And perhaps -- I don't mean to be flippant with the Court, but I can't stress how serious we are about that.

As to Reginald -- Reginald's not my client, I don't care about Reginald. As a lawyer, I care about Jonathan. But if you let this in against Jonathan or in favor of Jonathan, Reginald has a pretty good complaint. You're introducing evidence that absolutely goes to no aggravating circumstance. Doesn't go to any of the ones alleged, it doesn't go to any of the seven that are in existence. It doesn't go to any of the aggravators. It might come in, I suppose, if Reginald took the stand and somehow opened

[p.14]

the door. But if he doesn't, and that's the only reason that we -- you've kept them together, they might open the door, if he doesn't, we've gone through what I think is going to be about a 2-1/2-month trial, 3-month trial only for it to require a severance at the end. And that's certainly not a good use of judicial economy.

So I think the second -- the second prong -- the second reason why you grant a severance in a multi defendant case clearly is there. And I have yet to hear an argument against that. The State has provided a response to us. I don't hear an argument against that in the response. I see them cite a *Fox* case out of Oklahoma, *Fox versus State,* a case that I have some familiarity with. The problem with citing *Fox* is you have to be careful about going to Oklahoma to get your law on death penalty cases. Oklahoma has a different sentencing scheme. Oklahoma has the continuing threat, the likelihood that the defendant would commit a future act of violence and thereby constitute a continuing threat

to society. That aggravator is in Oklahoma, was when *Fox* was tried. It's not here. Our legislature, God bless them, has seen fit to keep that off of our books. And I -- God bless them because that is Katy, bar the door, Your Honor, when you're

* * *

[p.103]

CERTIFICATE

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

I, Sandra J. Berger, a Certified Shorthand Reporter, and a regularly appointed, qualified, and acting Official Reporter of the 18th Judicial District of the State of Kansas, do hereby certify that as such Official Reporter, I was present at and reported in Stenotype shorthand the above and foregoing proceedings in **Case No. 00 CR 2978, *THE STATE OF KANSAS, Plaintiff, v. REGINALD D. CARR, Defendant,*** and **Case No. 00 CR 2979, *THE STATE OF KANSAS, Plaintiff, v. JONATHAN D. CARR, Defendant,*** heard on the 9th day of August, 2002, before the Honorable Paul W. Clark, Judge of Division No. 9 of said Court.

I further certify that at the request of Mr. Debra J. Wilson and Rebecca E. Woodman, Capital Appellete Defenders, a transcript of my shorthand notes was typed by me or under my supervision via computer-aided transcription, and that the foregoing transcript, consisting of 102 typewritten pages, is a true copy of all

of the proceedings, all to the best of my knowledge and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Wichita, Kansas, this 20th day of March, 2003.

/s/Sandra J. Berger
SANDRA J. BERGER
CERTIFIED SHORTHAND REPORTER

SANDRA J. BERGER, CSR
Official Court Reporter

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CRIMINAL DEPARTMENT

Case No. 00 CR 2978
Case No. 00 CR 2979

[Dated November 4, 2002]

THE STATE OF KANSAS,

Plaintiff,

vs.

REGINALD D. CARR,

Defendant.

THE STATE OF KANSAS,

Plaintiff,

vs.

JONATHAN D. CARR,

Defendant.

JURY TRIAL
Volume 40

PROCEEDINGS had before the Honorable Paul W. Clark, Judge of Division 9 of the District Court of

Sedgwick County, Kansas, at Wichita, Sedgwick County, Kansas, on the **4th day of November, 2002**.

APPEARANCES

PLAINTIFF:
Ms. Nola Foulston
District Attorney
Ms. Kim Parker
Deputy District Attorney
Mr. Kevin O'Connor
Assistant District Attorney
Sedgwick County Courthouse Annex
535 North Main Street
Wichita, Kansas – 67203

DEFENDANT REGINALD D. CARR (Appearing in person):
Mr. Jay E. Greeno
Of Counsel, REALS & WEBER
Attorneys at Law
Suite 215
250 North Water
Wichita, Kansas – 67202
and
Mr. John V. Wachtel
KLENDA, MITCHELL, AUSTERMAN & ZUERCHER, LLC
1600 Epic Center
301 North Main
Wichita, Kansas – 67202

DEFENDANT JONATHAN D. CARR (Appearing in person):
Mr. Ronald F. Evans
Mr. Mark A. Manna

Attorneys At Law
Death Penalty Defense Unit
Suite 302
112 Southwest Sixth Street
Topeka, Kansas – 66603

SANDRA J. BERGER, CSR
Official Court Reporter

INDEX

	PAGE
Jury question	5
REGINALD DEXTER CARR VERDICT	13
JONATHAN DEXTER CARR VERDICT	22
CERTIFICATE OF REPORTER	44

SANDRA J. BERGER, CSR
Official Court Reporter

* * *

[p.33] [*Cont. Jonathan Dexter Carr Verdict*]

THE COURT: Mrs. Foulston, continuing on.

MS. FOULSTON: Thank you, Your Honor.

On January the 17th the State provided notice to the defendants, Jonathan and Reginald Carr, those aggravating circumstances that the State would rely upon in any sentencing proceeding.

The following aggravating circumstances were provided:

1. That the defendants, each of them, knowingly or purposely killed or created a great risk of death to more than one person;

No. 2. That the defendants, Reginald and Jonathan Carr, committed the crime for their own self or for another for the purpose of receiving money or any other thing of monetary value;

No. 3. The defendants, Jonathan and Reginald Carr, committed the crime in order to avoid or prevent lawful arrest or prosecution;

And No. 4 aggravating circumstance upon which the State intends to rely is that the defendant, Reginald Carr and Jonathan Carr, committed the crime in an especially heinous, cruel and atrocious manner.

After trial and conviction, the State reiterates its intent to rely upon the same aggravating factors to argue that the death penalty is

* * *

[p.44]

CERTIFICATE

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

I, Sandra J. Berger, a Certified Shorthand Reporter, and a regularly appointed, qualified, and acting Official Reporter of the 18th Judicial District of the State of Kansas, do hereby certify that as such Official Reporter, I was present at and reported in Stenotype shorthand the above and foregoing proceedings in **Case No. 00 CR 2978, *THE STATE OF KANSAS, Plaintiff, v. REGINALD D. CARR, Defendant,*** and **Case No. 00 CR 2979, *THE STATE OF KANSAS, Plaintiff, v. JONATHAN D. CARR, Defendant,*** heard on the 4th day of November, 2002, before the Honorable Paul W. Clark, Judge of Division No. 9 of said Court.

I further certify that at the request of Debra J. Wilson and Rebecca E. Woodman, Capital Appellete Defenders, a transcript of my shorthand notes was typed by me or under my supervision via computer-aided transcription, and that the foregoing transcript Volume 40, consisting of 43 typewritten pages, is a true copy of all of the proceedings, all to the best of my knowledge and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Wichita, Kansas, this 21st day of March, 2003.

/s/Sandra J. Berger
SANDRA J. BERGER
CERTIFIED SHORTHAND REPORTER

SANDRA J. BERGER, CSR
Official Court Reporter

IN THE EIGHTEENTH JUDICIAL DISTRICT DISTRICT COURT, SEDGWICK COUNTY, KANSAS CRIMINAL DEPARTMENT

Case No. 00 CR 2978
Case No. 00 CR 2979

[Dated November 5, 2002]

THE STATE OF KANSAS,

Plaintiff,

vs.

REGINALD D. CARR,

Defendant.

THE STATE OF KANSAS,

Plaintiff,

vs.

JONATHAN D. CARR,

Defendant.

JURY TRIAL
Volume 41-A

PROCEEDINGS had before the Honorable Paul W. Clark, Judge of Division 9 of the District Court of

Sedgwick County, Kansas, at Wichita, Sedgwick County, Kansas, on the **5th day of November, 2002.**

APPEARANCES

PLAINTIFF:
Ms. Nola Foulston
District Attorney
Ms. Kim Parker
Deputy District Attorney
Mr. Kevin O'Connor
Assistant District Attorney
Sedgwick County Courthouse Annex
535 North Main Street
Wichita, Kansas – 67203

DEFENDANT REGINALD D. CARR (Appearing in person):
Mr. Jay E. Greeno
Of Counsel, REALS & WEBER
Attorneys at Law
Suite 215
250 North Water
Wichita, Kansas – 67202
and
Mr. John V Wachtel
KLENDA, MITCHELL, AUSTERMAN & ZUERCHER, LLC
1600 Epic Center
301 North Main
Wichita, Kansas – 67202

DEFENDANT JONATHAN D. CARR (Appearing in person):
Mr. Ronald F. Evans
Mr. Mark A. Manna

Attorneys At Law
Death Penalty Defense Unit
Suite 302
112 Southwest Sixth Street
Topeka, Kansas – 66603

SANDRA J. BERGER, CSR
Official Court Reporter

INDEX

	PAGE
Opening by Ms. Foulston	10
Opening by Mr. Greeno	22
Opening by Mr. Evans	27

Defendants' Witnesses	PAGE
JANICE HARDING	
Direct Examination by Mr. Greeno	36
Direct and Cross-examination by Mr. Evans	112
Cross Examination by Ms. Foulston	120

EXHIBITS

Defendant's Exhibits	OFFERED	ADMITTED
Exhibit No. A-8	85	85
Exhibit No. A-9	55	55
Exhibit No. A-10	62	62
Exhibit No. A-12	65	65
Exhibit No. A-13	42	42
Exhibit No. A-14	86	86
Exhibit No. A-15	103	103
Exhibit No. A-16	49	49
Exhibit No. A-17	108	108
Exhibit No. A-18	103	103
Exhibit No. A-19	103	103

CERTIFICATE OF REPORTER 139

SANDRA J. BERGER, CSR
Official Court Reporter

* * *

[p.5]

It's not a concern for the safety of -- well, Mr. Manna would be the first one to go, frankly. It's not a concern for that. It's a flight concern. I see -- I look around me, I see Kevin sitting there to block any exit there. I see Joe Burns sitting there. I see Rick Craig, solid as a rock, to block any exit. And I don't think it's necessary.

I think until there's been some evidence, there's some indication that he is going to -- going to flee, that that injects something into this -- I mean, any time you shackle somebody, it comes with a lot of concerns. We're all human beings here making mistakes. I make several a day. And -- certainly, at least. And some of the jurors might see him come in or out. And I think the -- as you well know, Judge, you have to balance that against the necessity of this. I don't think there has been any showing of necessity.

THE COURT: Thank you.

While there's evidence of flight at the beginning, there's been nothing that would indicate misconduct on behalf of Mr. Jonathan Carr at all in any of the proceedings I've been involved in. The sheriff's procedures, however, I think, ought to be followed. And this is the way we will do it.

[p.6]

Once Mr. Jonathan Carr is seated, then the leg irons will be placed. They will be placed in such way

that they may not be -- or cannot be observed by anyone on the jury. It is not necessary, I don't believe, that he have them when he comes in or when he leaves. But just when he's seated here, once we start the proceeding.

And I don't -- you all on behalf of the district attorney can say anything you want. It's actually a sheriff matter. So --

MS. PARKER: And I think the record should reflect that the table is still covered so that he cannot be seen in the seated position in the restraints. And certainly the Court's decision and the validity of the sheriff's rules, just because we have individuals placed and they stand solid does not mean that their lives should be put at risk.

THE COURT: And I don't Sergeant Miller, do you have the --

SERGEANT MILLER: I will get them.

THE COURT: Does Mr. Jonathan Carr have -- you're going to go get them. Okay. We'll do that then.

I've given you lawyers, while we're waiting, the instruction before evidence, penalty phase, that I

[p.7]

intend to read to the jury before we start the proceedings.

I believe the shields set up and taped to the table are such that nobody can see from the jury box under the table at all.

Okay. Anything else in that regard?

MR. EVANS: No, sir.

THE COURT: Okay. Mr. Greeno, I understand your client will not put the sweater over his handcuffs. And if the jury sees it, then the defendant has invited it --

MR. GREENO: I understand, Your Honor.

THE COURT: -- in my opinion. So he can either have the sweater, not have the sweater, whatever he wants. Do you want to visit with him about it?

(Off-the-record discussion.)

MR. GREENO: Mr. Carr doesn't see the point in it, so he's elected not to use it. It's his choice. Nothing I can do about it.

THE COURT: And he's -- it's made known to the jury, he's the one that broadcast it, then.

Are we ready, then, for the jury?

MR. EVANS: Yes, sir.

THE COURT: Ms. Marquez, bring the jury,

[p.8]

please.

(The jury returned to the courtroom, after which the following proceedings were had.)

THE COURT: Good morning, members of the jury.

THE PANEL: (Responding).

THE COURT: That document being handed you by Ms. Marquez is a copy of an instruction before evidence in this stage. And as we've done in the past, I'm going to read it. Please read along with me as soon as you get your copy.

Okay. Everybody has a copy?

Okay. Read along with me, please.

"Instruction before evidence, penalty phase."

"This is the penalty phase of the trial. The focus will be on the first four counts. These are the capital murder counts. It is the responsibility of the jury to decide the proper sentence for the individual defendant in these counts.

"It is my responsibility to decide on a proper sentence for the individual defendant in all other counts in which you returned a verdict of guilty.

[p.9]

"The laws of Kansas provide that a separate sentencing proceeding shall be conducted when a defendant has been found guilty of capital murder to determine whether the defendant shall be sentenced to death. At the hearing, the trial jury shall consider aggravating or mitigating circumstances relevant to the question of the sentence.

"Aggravating circumstances are those which increase the guilt or enormity of the crime or add to its injurious consequence, but which are above or beyond the elements of the crime itself.

"Mitigating circumstances are those which in fairness may be considered as extenuating or reducing the degree of moral culpability or blame or which justify a sentence of less than death, even though they do not justify or excuse the offense.

"The State has the burden to prove beyond a reasonable doubt that there are one or more aggravating circumstances and that they outweigh any mitigating circumstances found to exist.

"The decision of the jury should not be based on the number of aggravating or mitigating circumstances that are shown to exist."

Hang on to that, please. Just add it to your packets.

[p.10] [*Opening by Ms. Foulston*]

Are you ready for the State?

MS. FOULSTON: State's ready, Your Honor.

THE COURT: Mrs. Nola Foulston, District Attorney, State of Kansas.

MS. FOULSTON: May it please the Court.

THE COURT: Mrs. Foulston.

MS. FOULSTON: Counsel, ladies and gentlemen of the jury.

The guilt phase of this case has been concluded with the verdicts that have been established by this jury and entered into the record yesterday. If we reflect back to the time that you went through a jury selection process, that long and arduous process, where you were questioned as a number of jurors all together and then singly, independently about your thoughts on capital punishment, the death penalty and what as a juror would be you responsibility.

And I believe that the information that was presented to you not only by the Court, not only by the State, but by counsel for both defendants was that the State was required to prove that aggravating circumstances attendant to these crimes that committed -- these capital murders must outweigh any mitigators that are presented by the defendants, whatever they choose to prove to show or lessen or to

[p.11]

change any culpability under the death penalty statute.

In Kansas, in 1994, the death penalty became law. And at that time there were great debates. The law is that in the State of Kansas if you commit a capital offense and if the aggravating factors outweigh the mitigating factors, then the sentence shall be death. There is no debate that that is the law. And jurors as officers of the court are sworn to follow that law if they find that the evidence that's presented by the State has shown that any mitigating circumstances don't rise to the threshold

of mitigating that which has occurred, the deaths of Aaron Sander, Jason Befort, Heather Muller and Brad Heyka. And also, of course, while it's not a charged offense, the critical injury received by H. G.

In choosing to make a law, the State of Kansas said that we want to make sure that it is narrow in scope rather than broad. To select only those crimes that fall within the ambit of that which deserves to be considered for the death penalty. And so it was the State chose those particular portions of the capital statute, A. and B., that on these verdict forms each were circled in each count reflecting the jury's decision that the State had met its burden to

[p.12]

prove without reasonable doubt that these deaths resulted after substantial sexual degradation and assault and that there was a killing of four individuals. A. and B. And those were found against each defendant, Reginald and Jonathan Carr.

So as they stand here convicted of those cases and those charges, it is then the jury's responsibility to then look at the aggravating circumstances that apply that the State says are incorporated into all of the evidence that has been presented. Evidence that the State believes is appropriate for the jury to enter its recommendation that death is the appropriate penalty.

You have heard in the instructions before the penalty phase that which are contemplated as mitigating circumstances. Anything, in fairness, may be considered as extenuating or reducing the degree of moral culpability or blame or which

justifies a sentence of less than death, even though it does not justify or excuse the offense. That is the responsibility of the defendants, to bring that evidence to you so that you may weigh and measure it against those aggravating circumstances that the State has set forth with particularity.

And again, under the Kansas law, the State

[p.13]

is required to select from a limited section that provides only those circumstances upon which the State can rely in asking for the death penalty. Those are the aggravating factors. Those factors apply in all of the cases of Counts 1, 2, 3 and 4 with regard to Brad Heyka, Jason Befort, Aaron Sander and Heather Muller.

And when I speak of those cases, I speak of those individuals, those individuals' death under the circumstances that occurred the 14th and 15th of December in the year 2000. Circumstances, evidence, information, witnesses's testimony that you have listened to patiently in reaching the verdict at first that there was culpability and guilt and now to determine whether or not the killing was of such an aggravated manner that there is no mitigation that can rise to the threshold. And that is the State's position.

The mitigators that we have all along identified in this case and made known from the beginning of this case, that is the requirement that is placed upon the State, so that it is known exactly where we are going with our evidence and what we intend to

prove. Those aggravators that you will have on the verdict form relate to those four capital

[p.14]

cases. And they are each -- in each count they are each the same.

The first is that the defendants, Jonathan and Reginald Carr, knowingly or purposely killed or created a great risk to more than one person. You will find from your review of the evidence, from your discussions that in this particular case five individuals were terrorized, were beaten or raped or sodomized or robbed or humiliated and degraded and culminated in the killing of four and in the great risk of death to H. G., the lone survivor. While she is not counted as a capital case, because thankfully she was here to tell her story, nevertheless, the great risk of harm that was presented to her may also be considered.

The State states that there is no mitigation from the fact that these defendants, Jonathan and Reginald Carr, committed the crime for themselves or for another. And that their purpose was to receive money or anything of value. And you may consider the evidence in this case to lead you to the conclusion that this is an aggravating circumstance that has been proved by the State without a reasonable doubt.

We look to the home. We look to a home that's been ransacked. We listened to the testimony.

* * *

[p.16]

disregard of their lives. To leave no person behind to tell the story, to leave no person behind to say what heinous and cruel and atrocious things had happened before they were executed on that field.

And when they left that field, ladies and gentlemen, the evidence has shown, going upon their way back to the Birchwood location, filling their trucks with the loot, with the things that they desired that caused the death of these young people, counting the money in their pockets, fondling the ring that was taken from Heather's finger, looking at the watches that were taken, looking at the clothing and looking at shoes that probably never would have fit anyway, oh, what a surprise to learn that one young person had survived, by whatever reason.

She was meant to die. She was meant not to be able to tell the story of these atrocities, of these cruel intentions, of these heinous ideas and depraved conduct of Jonathan and Reginald Carr together. Together. She survived and it wasn't meant to be, because had she moved, had she not laid in the snow, had she not been run over by the truck and continued to play dead, surely her life too would have ended on that field. But it didn't. That doesn't negate the fact that they chose to leave no witnesses.

* * *

[p.27] [*Opening by Mr. Evans*]

They're going to talk to you about how Reggie's father abandoned him. You may hear how Reginald's father was contact in this particular case and had nothing to do with him. Had absolutely nothing to do with him.

We're going to hope to explain to you in the end, when you go back to deliberate, if you can understand, how this little boy right here, this happy little boy, became this individual right here. The person that did the acts in the early morning hours of December the 15th in the year 2000.

In the end we're going to ask for your understanding. We're going to ask for you to hold Reginald Carr accountable for what he's done and we're going to ask you to punish Reginald Carr, but we're going to ask you to extend the mercy to Reginald Carr that he did not extend to those four young individuals in the early morning hours of December the 15th. And we hope and we pray that we're going to be able to give you the reasons to extend that mercy to Reginald Carr.

Thank you very much.

THE COURT: Thank you.

Opening address for Mr. Jonathan Carr, Mr. Ron Evans.

MR. EVANS: Good morning, ladies and

[p.28]

gentlemen.

I can tell you this won't be a debate on how bad these crimes are. They're horrible. There's no getting around that. But there is one thing to keep in mind, regardless of what you decide at the end of this week or the start of next week, when you go back in that room again and you make a decision about life or death, Jonathan Carr's 22 years old. And he's going to be in prison the rest of his life. Whether he's executed there or he dies there because you've seen fit to spare his life, that's where he's going.

So this isn't about blame, this isn't about shifting responsibility. You held him responsible yesterday. You blamed him, as I expected you to.

I tried not to waste your time since this trial got started. And I will try not to waste your time this week. But there are some things that you need to know about this young man before you sentence him. I don't know that you'll think that they're important because I don't know you know that well and I know you now as well as I ever will. But you need to know him a little better before you sentence him.

Mitigating evidence is what you decide it is. You decide how much mitigating evidence is worth. And you all come at this from different perspectives.

[p.29]

That's why we asked you those questions last month, the month before that about, you know, your being strong and having a perspective of your own and how -- what's important to one juror about mitigating might not be important to another. So I

try not to be too much of an editor. If there's something that I think you need to hear, then I try to put it on you and let you decide how much -- what you think it's worth.

* * *

[p.30]

surgery that led to complications. She died very young. Jonathan didn't really know her. He was just a baby when she died. But it caused this family that was already weak to tumble.

And Reginald, Senior, lost it. He was not a strong man to begin with. He became completely worthless after that child died. Janice blamed him for the death. He drank, he got depressed, was in and out of the mental hospitals, eventually moved away from the family. These boys, young men, they don't know him. As Mr. Greeno said, we sought his input. He wasn't interested in this case. He hasn't had anything to do with these young men for years. He doesn't really know them.

There are some extended family there in the Cleveland area. Unfortunately, none particularly good role models. None particularly to step in and mentor either one of these young men. Barbara, the grandmother, Janice's mother, severely mentally ill. Another uncle, Michael, severely mentally ill. Barbara is so mentally ill she gets thrown off planes. I wanted to bring her here to show you folks, could not get her here. You'll hear some other family members talk about Barbara.

Something else I think you need to know.

[p.31]

When Jonathan was in grade school going to the Harvey Rice grade school, he was about seven years old, he got charged with a rape. Got charged with raping another seven-year-old little girl. This was a case that got some notoriety in Cleveland because this was seven-year-olds, Jonathan and two other young men, seven, boys, not young men, accused of raping another seven-year-old girl. He was eventually exonerated of that. The father of the little girl, come to find out, was the one that was molesting the little girl.

But Jonathan got to wear the tag of the Harvey Rice rapist. Other children taunted him. Janice decided it was time to get him out of town. He moved down to Brownsville to live with another family member you're going to meet, Phyllis.

MS. FOULSTON: Excuse me, Your Honor, Mr. Evans.

Your Honor, objection to the statements of counsel with regard to information that apparently is not going to be placed in evidence but for counsel's comments. And on that basis to the form of his statements and to the hearsay of things he's placing before a jury and then telling them they're not going to hear.

THE COURT: Opening addresses should be

[p.32]

limited to that evidence the lawyers intend to present on behalf of their clients or things they are

going to bring up for your consideration in mitigation.

Mr. Evans, please press on.

MR. EVANS: And I expect you all to hold me to that.

When he got to Brownsville, his Aunt Phyllis will tell you about what Jonathan was like. He was seven years old, he loves his mother, he missed his mother. He was down there with Phyllis who is a physician. She's a doctor. She will tell you about what Jonathan was like then. She called him "the Screaming Man" because he cried from the time that he woke up until the time that he went to bed. Always screaming.

She found him to have learning disabilities. And you'll hear about those disabilities. He's dyslexic. When he got into school he had to have exams read to him because he could not read them. The children taunted him about that. Is that mitigating? Does that mitigate what's happened here? I don't know. I don't know. But should you hear it -- you're going to hear it.

He got held back in middle school. History of mental illness in his family. Jonathan tried to

[p.33]

hang himself when he was seven. When he was 16, his big brother Reggie was going off to prison, tried to kill himself again, Jonathan did, by drinking anti-freeze.

There's some history here that I think you need to hear about how he came to sit here convicted of these horrible crimes. There's something else you need to hear about him. There's some good in him. He's touched some people. When he's not around Reggie, he does pretty well. You're going to hear from some people from Dodge, an older couple, the Culvers. They knew him, they -- he worked for them to some extent. They love this young man. They've been watching this on television. They cannot believe he did this. These crimes compared to the mán, the young man, the boy, they knew in Dodge, make no sense to them. But he touched them and they want to talk to you and they will sometime this week because you need to know that there is some good in this young man.

You'll hear from a Jesse Harris. He's coming in from Cleveland. He'll talk to you about the Jonathan that he knows. He can't believe Jonathan did this. He wants an explanation. There's no explanation for something like this. What would the explanation possibly be? What could it possibly be to

[p.34]

explain this away?

But that's not what this hearing is about, ladies and gentlemen. That's what the last one was about. You didn't hear us try to explain away, certainly not, the events of Birchwood. There is no explanation. But you've got a very young man sitting over here. A young man that prior to these crimes with no serious involvement with the law.

And you'll be asking to give him the ultimate punishment. It's a hard thing we ask you to do, to make a decision like this. I hope when you finished hearing this evidence, you'll see fit to spare his life.

Thank you, Judge.

THE COURT: Thank you.

Ms. Parker and Ms. Foulston -- Mrs. Foulston. Ms. Parker. Ready for the State's case in chief.

MS. FOULSTON: Your Honor, as the State's case in chief, we ask the jury and the Court to incorporate all the witnesses, all 97 witnesses, those who testified, during the State's case in chief during the guilt phase, those that testified in the defense case in chief for Reginald Carr and for Jonathan Carr, all of that evidence that relates to the capital murder deaths of Aaron Sander, Brad Heyka, Jason

[p.35]

Befort and Heather Muller, and as it relates to the aggravating factors that the State must prove beyond a reasonable doubt that the defendant -- defendants knowingly or purposely killed or created a great risk of death to more than one person, as it relates to the aggravating factor that the defendants committed the crime for the defendants' self or another, for the purpose of receiving money or any other thing of monetary value, all the evidence in -- that has the -- the jury has previously heard as it relates to the defendants committed the crime in order to prevent a lawful arrest or prosecution, and all the evidence that was presented during the guilt phase as it relates to the

defendants committed the crime in an especially heinous, atrocious or cruel manner, including all exhibits that were admitted by both the State and the defendants and the stipulations.

With that, Your Honor, the State rests its case in chief.

* * *

[p.36]

MR. EVANS: Your Honor, as is true with the close of the evidence in other stages of the case, we would make the same motions and we would reurge all previous motions.

MR. GREENO: Same announcement, Your Honor.

THE COURT: The same ruling.

Mrs. Harding, the next witness -- Mrs. Harding does not wish to have her evidence broadcast in any manner, either by sound or in picture.

Is that right, Ms. Harding?

THE WITNESS: Yes, sir.

THE COURT: That's what we'll do.

Mr. Greeno.

MR. GREENO: Thank you, Your Honor.

JANICE HARDING,

called as a witness herein on behalf of the Defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

MR. GREENO:

Q. Would you please tell these people your name.

A. My name's Janice Harding.

Q. You're going to have to speak up, Ms. Harding.

A. My name is Janice Harding.

[p.37]

MR. GREENO: Okay. Move this up a little bit.

That is not much help, is it?

MR. GREENO:

Q. Ms. Harding, you don't want to be here today; is that right?

A. Yeah, it's a hurting thing.

Q. I understand. You are Reginald and Jonathan's mother; is that correct?

A. Yes, I am.

Q. There was a period of time when you lived in Cleveland, Ohio; is that right?

A. Yes.

Q. And when you lived in Cleveland, Ohio, you had some children; is that right?

A. Yes, I did.

Q. Let's talk about that, okay?

A. All right.

Q. Who was your first born child?

A. Temica.

Q. And when was Temica born?

A. [REDACTED], 1974.

Q. Mrs. Harding, how old were you when she was born?

A. 16.

Q. And Temica's father was?

[p.38]

A. Reginald Carr, Senior.

Q. And how old was Reginald Carr, Senior?

A. 17.

Q. When you had Temica, what was your life like?

A. I was in school. Just growing up. It was all right.

Q. Did you marry -- were you married to Reginald Carr when you had Temica?

A. We married when I turned 18 and he was 19.

Q. Okay. Was there a period of time when you and Reginald Carr ran off together?

A. Yeah. I left home when I was 16 and he and I lived together. And when I turned 18, and we got married three days after my 18th birthday.

Q. Was that because you couldn't get permission from anybody's parents to get married?

A. We couldn't get permission from my mother.

Q. Was there a period of time when Temica lived out -- when Temica didn't live with you?

A. Yes.

Q. Can tell us about that, please.

A. When my sister moved to California and my mom was going with her, she was doing part of her residency, I'm not sure, and it was an opportunity for Temica to go to a private school. And my sister asked me if she could go and I told her yes. And so she went out to

[p.39]

California with my sister and my mother and my sister's little girl.

Q. During the first year of Temica's life, did she live with her paternal grandmother?

A. For about the first -- yeah, the first year. Yeah, the first year we stayed there.

Q. Then who Has the next child that you had?

A. Reginald.

Q. And when was Reginald born?

A. [REDACTED], 1977.

Q. And where was he born at?

A. He was born at Rainbow Babies and Children Hospital in Cleveland, Ohio.

Q. How were you -- how old were you then?

A. 19.

Q. Okay. I want to talk about your pregnancy with Reginald. Was it normal?

A. My pregnancy with all the children, I had premature labor. I have what they called an incompetent cervix. And so in order to carry the children to a term where I could deliver, I had to have a slip stitch put in my cervix so that I wouldn't miscarry.

Q. Was Reggie born prematurely?

A. All my children were premature.

Q. How much premature was Reginald born?

[p.40]

A. Gee, Reggie was a couple months premature. He stayed in the hospital 3-1/2, almost 4 months, maybe a little longer.

Q. Before --

A. A little longer.

Q. Before he got to go home?

A. Before he got to go home, yes.

Q. Okay. Can you speak up just a little bit more?

A. Okay.

Q. And then the next child that you had?

A. I had a daughter Regina. She was born [REDACTED], 1979.

Q. And I take it from your previous comments that Regina was born prematurely as well?

A. Yes.

Q. Did she develop any serious disease early on in her life?

A. Well, all the children had jaundice at birth. And had to go under the bilirubin light and were all incubators for a while. Gina developed what is known as Williams' tumor which is a cancer.

Q. How old was she when that was diagnosed?

A. Two.

Q. Okay.

A. Her abdomen swelled. We were on vacation at the time,

* * *

[p.46]

Q. Upon reflection, do you feel that you kind of became withdrawn?

A. I became withdrawn from their father, yeah.

Q. Well, tell us about that.

A. Well, we were staying on Eldemere in Cleveland. And Reggie and I weren't getting along. We were doing a lot of arguing, a lot of fussing, you know, a lot of fighting. And I would leave. I would go stay at my godparents' house a couple days at a time, then go back home. And this went on for a few months. And finally --

Q. I'm --

A. -- Reggie went to work and --

Is this better?

Q. Oh, yeah.

A. Reggie went to work and I went home and I packed up everything in the house, put everything in storage and moved in with my godparents.

Q. Let me ask you about these fights that you had with Reggie, Senior. Did they sometimes take place in front of the children?

A. I never thought they took place in front of the children. Now, they may have. The children may have gotten up and seen us fighting. But as far as I was aware, they were not being taken place in front of the

[p.47]

children. None of the children ever said anything to me about it to this day. So if it took place in front of the children, I was unaware of it.

Q. Was there a lot of yelling and screaming?

A. Yeah, there could be some yelling and screaming.

Q. Did they ever escalate into physical violence?

A. Yeah, their dad used to hit me.

Q. Did you ever hit him?

A. Oh, yeah. I got him real good one time.

Q. Tell us about that.

A. Well, we were arguing and he was just fussing and he had swung at me and I picked a bat up and I beat him with it. I told him he wasn't going to hit me again.

Q. When you left and you moved over to your godparents' house, what happened then?

A. Well, I stayed with them for several months. And --

Q. Did the children have any contact with Reginald, Senior, during that period of time?

A. No. Very little. He came by, I think, once. And that was -- no, twice. He came by once and told me that he wanted the car back and I told him he couldn't have it. It was packed in the backyard, my godfather's car was parked where he couldn't get it out. And I think a week later he came over and took the car. But when we stayed there, there was not any

[p.48]

contact. He didn't come over there and I didn't take them to see him.

Q. How old was Reggie at that point in time?

A. Gees. He had to be maybe five or six.

Q. Okay. Did he seem to miss his father?

A. Yeah, he was always the father's favorite. More cared, to me, for his dad than the rest of the kids.

Q. I'm going to hand you what's been marked for identification purposes as Defendant's Exhibit A-16 and ask if you can identify that?

A. That's Reginald and his father.

Q. Do you have any idea about how old Reginald was when that picture was taken?

A. Maybe about 15, 16.

Q. Okay. Do you know how it was that Reginald came to see his father at that point in time?

A. He went to Ohio to visit his sister and --

Q. Reginald, Junior, or Senior?

A. Reginald, Junior, went to Ohio to visit his sister. And while he was there, he visited with his dad. His dad showed up.

Q. Was the dad living in Ohio at that point in time?

A. I'm not sure where his dad was living. I think he was still in California.

Q. We'll get to that a little bit later.

[p.49]

A. Uh-huh.

MR. GREENO: Your Honor, I move for admission of Defendant's A-16.

MS. PARKER: No objection.

MR. EVANS: No objection.

THE COURT: It's admitted.

MR. GREENO:

Q. When you're living at your godparents' house, Reginald Carr, and you, Senior, are estranged, what happened after that?

A. I filed for divorce.

Q. Okay. Did you have some suspicions about Reginald Carr, Senior, and some infidelity? Do you think he was carrying on --

A. Yeah, I know he was carrying on.

Q. Tell us about that.

A. When we were going to church, you know, as a family, and I went in the hospital, my appendix ruptured. And while I was in the hospital, he had an affair. And we talked to elders in the church. And they told me that, you know, if I forgave him, we could stay together. And/or if I didn't want to forgive him, you know, we can go through other measures. I forgave him, we stayed together. Because at the time I wanted to have my family together. And he is a pretty nice

[p.50]

person. He's a nice guy, you know. But as time went on, I fell out of love with him and decided to divorce him.

Q. Did he continue to drink?

A. Yes.

Q. Did he continue to drink heavily?

A. Yes.

Q. Did you continue to drink?

A. Yes.

Q. Did that add to the problems in your marriage?

A. Well, we weren't together, so -- by then.

Q. Okay.

A. I had left home by then, so that had nothing to do with the marriage. Actually, we were in the process of a divorce. It took a year to get the divorce because he contested it. I kept saying, no, he kept saying he wanted to remain married. And after a year, the judge granted us a divorce because we had been separated for over a year.

Q. What was going on with the kids at that point in time?

A. They were going to school. And in the summer, school was out, they would play with the kids in the neighborhood.

Q. Were they seeing their father?

A. Not often. Not often.

[p.51]

Q. Did Reggie seem to miss his father?

A. Yeah. And also on weekends Reggie would go up and visit with his dad.

Q. How often do you think that happened?

A. He didn't go that often. Maybe three or four times to spend the night and once he went up and Jonathan went with him. Normally when he went, he went by his-self to go visit with his father.

Q. Did Reggie indicate to you that he missed his father?

A. Yeah. He wanted to go stay with him. And we were going to send him to go stay with his dad because he, you know, had started getting in a little bit of trouble. And I thought that if he went with his father because he bonded so well with his dad, maybe his dad could help him, you know, to stay out of trouble and kind of turn him around. But he never made it.

Q. Okay. We'll talk about that in a little bit, okay?

A. Uh-huh.

Q. At the time that you were separated Reginald, Senior, and you were seeking a divorce --

A. Uh-huh.

Q. And he was attempting to impede your efforts to get a divorce --

A. Uh-huh.

[p.52]

Q. -- did you ever have any contact with Reginald, Senior, over the telephone?

A. Yeah, I talked to him a few times.

Q. Did you ever talk to your friends or your relatives about Reginald, Senior?

A. Uh-huh.

Q. Did you talk about his infidelities?

A. Yeah.

Q. And understandably that probably didn't make you very happy; is that right?

A. No, it didn't. Who would be happy behind it?

Q. Did the children hear about all this?

A. It's possible. When you're angry, you don't care who's listening.

Q. So when did you get divorced, do you recall?

A. I think it was September of '70 we got -- '86. 1986.

Q. And how old was Reginald then? Reginald, Junior.

A. Ten.

Q. And where did his father go? Did his father stay there in Cleveland?

A. Yes, the dad stayed in Cleveland. I think two months after we were divorced he remarried.

Q. That was Anita Williams --

A. Yes.

Q. -- is that right?

[p.53]

And he had two more children?

A. Yes.

Q. Did he continued to maintain contact with his children? Did Reginald, Senior, contain to maintain contact with his children?

A. With my children?

Q. Uh-huh.

A. No.

Q. Did you -- did you try to encourage contact with Reginald, Senior, with Reggie and Jonathan?

A. No.

Q. And why is that?

A. Well, I figured we went to court and we were divorced, he knew he had parental rights and he was supposed to pick the kids up every other weekend. He never made an attempt to pick them up, I never made an attempt to take them to him. I figured he was married and if he didn't want to be bothered, I was not going to try to force them on him.

Q. I'm going to hand you what's been marked as Defendant's Exhibit A-9 and ask if you can identify that.

A. Yeah, that's Reggie and Jonathan at my mom's house.

Q. Your mom's house would be where?

A. Garfield Heights, Ohio.

[p.54]

Q. Okay. A suburb of Cleveland; is that right?

A. Yes.

Q. Do you have any idea about when that picture was taken?

A. Well, Reggie must have been about six and Jonathan about three, seeing they are three years apart.

Q. Okay.

A. And Reggie's missing a tooth.

Q. Okay. It says '84 on their shirts.

A. Uh-huh.

Q. Would that be the year --

A. Yeah.

Q. -- when that picture was taken, do you think?

A. Yeah, it could be.

Q. That would have been prior to your divorce; is that right?

A. Yeah.

Q. And prior to your separation from Reginald Carr, Senior?

A. Yes.

Q. Boys pretty happy back at that point in time?

A. Yeah.

Q. Did they ever get in trouble, cause any problems?

A. Just the same stuff all little kids do.

MR. GREENO: Your Honor, we would move for

[p.55]

the admission of A-9.

MS. FOULSTON: No objection.

MR. EVANS: No objection.

THE COURT: It's admitted.

MR. GREENO:

Q. You said about two months after the divorce Reginald, Senior, remarried, didn't have a bunch of contact with his children. Did you ever hear any things from Reginald about missing his father, wanting to see his father?

A. Yeah, he said he wanted to see him. And he visited him a couple times, not many.

Q. Did you ever -- Reggie ever cry for his father?

A. No, not in front of me he didn't.

Q. Reggie was a pretty strong little kid?

A. Yeah.

Q. He was the oldest son; is that correct?

A. Yes.

Q. Did he attempt to step into that role, be the oldest son?

A. Oh, he stayed in the kid's place. He was pretty good.

Q. You said that at some point in time Reggie started to get in a little bit of trouble; is that right?

A. Yeah.

Q. When was that?

[p.56]

A. Well, not until we moved to Kansas did he get in any -- did either one of them get in trouble.

Q. I'm sorry?

A. I said not until we moved to Kansas did Reggie get in any kind of trouble. He was, like I said, a pretty good -- a good kid then. I just think that he started hanging out with kids that were older than him that were, you know, maybe bad influences. And he got in a few little things of trouble.

Q. And this is in Dodge City, you're talking about?

A. Yeah.

Q. Prior to moving to Dodge City, you embarked on a new relationship; is that correct?

A. Pardon?

Q. Prior to moving to Dodge City you became involved in a new relationship; is that correct?

A. Yes.

Q. How many -- well, did you date around a little bit before -- you're currently married; is that right?

A. Yeah.

Q. And who are you married to?

A. Rick Austin.

Q. And how long have you and Mr. Austin been married?

A. We've been married the last 8 years. We've been together 17 years.

* * *

[p.69]

Q. And where does she fall in the range?

A. She's the oldest of us all.

Q. And she's a medical doctor; is that correct?

A. She's a pediatrician.

Q. And your children have spent some time with your sister; is that correct?

A. Quite a bit.

Q. Okay. Initially when you talked about Jonathan going down and living with Dr. Harding down in Texas; is that correct?

A. Brownsville, yes.

Q. Okay. And that was when Jonathan was about seven years old?

A. Six, seven. Yes, around that age.

Q. How long did he stay there?

A. A little over a year.

Q. Okay. And when he came back, where did he come back to?

A. He came back to stay with me. I was living in Garfield Heights.

Q. I'm sorry?

A. I was living in Garfield Heights, Ohio.

Q. Okay. Which is a suburb of Cleveland, correct?

A. Uh-huh.

Q. And then did you send Temica out to live with

[p.70]

Dr. Harding?

A. Temica went to Jon -- Temica went to California before Jonathan went to Brownsville.

Q. When did Temica go to California?

A. Temica went to California, I think when she was eight or nine. My sister had just finished school in Cincinnati, had just been hooded a doctor, and she was going to California to do her residency and she had just adopted a little girl and she asked me because I was separated their father and she had a little girl, that if she could take Mica with her. And, you know, when she got there, she was going to put them both in private school and dah, dah, dah. And they went and she went to a Lutheran school there.

Q. Okay. The daughter that Dr. Harding adopted, what is her name?

A. Barbara.

Q. When the children were growing up, did you and Reginald, Senior, admission any -- or administer any punishment when they misbehaved?

A. Yeah, I spanked my kids the same way my momma spanked me.

Q. Well, let's talk about that. How did you spank your children?

A. Well, I spanked them with belts. And if there was a

[p.71]

house shoe there and they did wrong, I picked them up and spanked them with that. And occasionally I picked up an extension cord and would spank them with that the same way I got spanked.

Q. Okay. Were there two specific belts that you used for spankings?

A. Yeah, I named two belts. One was called "Heat Daddy," and other one, I forget what his name was, but they both had names.

Q. Okay.

A. And now I got a little ruler that I spank with now.

Q. Okay. When the kids were going to get spanked with the belt, were they given the option of choosing which belt they got spanked with?

A. Uh-huh.

Q. Is that a yes?

A. Yes.

Q. How frequently would that occur?

A. Well, whenever they got in trouble. You know, if they didn't get in trouble, they didn't get spanked. But if they got in trouble, they did.

Q. What other kind of punishment did they have?

A. They would either stay in their room or got spankings, couldn't go outside. Well, they weren't kids that went outside anyway. They stayed in front of TVs

[p.72]

playing video games and stuff. So it wasn't like they went out a whole lot anyway. So --

Q. Okay. Was there a time when Reggie visited relatives in West Virginia?

A. Yeah.

Q. When was that?

A. I'm not sure how old he was, but he went to spend a summer with his step-cousin Jovan and aunt and uncle Shirley and Stevie.

Q. Where at in West Virginia?

A. Fairmont, West Virginia.

Q. Okay. And how long would he be gone?

A. He was going to be gone for the summer.

Q. Okay. Did he just go one summer or did he go more than one summer?

A. Just one summer. And he came home early because he had an accident while he was down there.

Q. Can you tell us about the accident?

A. Well, Shirley told -- called me and told me that Reggie and Jovan and another little boy were riding bicycles. And West Virginia is very hilly and they were coming down a hill, skidded on gravel and they fell and Reggie busted his knee open.

Q. Okay. Did she ever tell anything about Reggie losing consciousness?

[p.73]

A. No, she didn't tell me he lost consciousness.

Q. Okay.

A. He may have. I can't say he didn't.

Q. Okay.

A. And then she may have told me that and I don't remember.

Q. Sure. Were there -- we've already talked about the drinking that was going on in the home.

A. Uh-huh.

Q. And you didn't think it was excessive; is that right?

A. No, I didn't.

Q. Okay. Did you think Reginald, Senior's, drinking was excessive?

A. Periodically. Not too often.

Q. Did you notice any mood changes with him when he drank?

A. Sometimes. Not too often.

Q. Was there any drug use in the home?

A. Yeah.

Q. Can you tell us about that?

A. We used to smoke marijuana.

Q. Okay. How frequently?

A. On the weekends.

Q. Did the kids know about it?

A. Not that I know of.

[p.74]

Q. Was there some point in time where they became aware of it?

A. Since I've spoken with the lawyers here, they tell me that, yes, the kids were aware of it. They never brought it to my attention when -- back those years ago.

Q. Okay. There's been some discussion about when you were gone from the home.

A. Uh-huh.

Q. Can you tell us a little bit more about that? What those circumstances were and how long you were gone.

A. Which -- what are you -- say that again.

Q. The times when you would leave --

A. Uh-huh.

Q. -- the home and not come back --

A. Uh-huh.

Q. -- for a couple of days.

A. Uh-huh.

Q. Can you tell us a little bit about those circumstances? What were you doing at the time? Were you involved with anybody?

A. I wasn't involved with anyone in particular. I was kind of leaving to get away from their father, from their dad. Their dad and I at the end of our relationship just did not get along. And as far as I

* * *

[p.79]

shop. You all will cook what's here and cook for yourselves for a while. And that's what they did. And then when they cooked down to the last thing that was there, then I went shopping again.

Q. Is that the time that they describe as when they had to eat vegetables?

A. Uh-huh.

Q. Is that a yes?

A. Yes, it is.

Q. How long did that last?

A. Ooh. I guess the freezer was full, the cabinets were full. A couple weeks until they had deplenished what was there.

Q. When Reginald, Senior, left Cleveland, do you know where he went?

A. He went to California.

Q. And do you recall when that was?

A. No.

Q. Okay. Do you recall how long it was after your divorce that he left?

A. No, because he was married in between our divorce and him going to California. And I know he had a couple of kids in between there, so it was a couple years. I don't know how many. It was several years.

Q. And you said that Reginald, Senior, had sporadic

[p.80]

contact with Reginald, Junior; is that correct?

A. Yes.

Q. Did Reggie, Reggie, Junior, ever indicate an interest in seeing his father more often?

A. Well, he didn't indicate it, but I knew he wanted to go see his dad.

Q. Was there ever an occasion when there was some discussion about Reggie, Junior, going to California to visit his father?

A. Yeah.

Q. Can you tell us about that?

A. Well, Reggie was having problems in school. And I called his father and told him I wanted to -- you know, him to come up there and spend some time with him because Reggie -- I knew Reggie wanted to be with his dad. And maybe if he came out there and spent a little time with you, he would, you know, maybe straighten up a little bit because some sons do well with their fathers. And I know Reggie is -- you know, he enjoys his dad. Or did. At least that's what I thought, that's what I was assuming. And so I bought a train ticket for Reginald to go to California to go visit his father. And on the morning that I was supposed to put Reginald on the train, his dad called me at work and told me he couldn't come. And so he

[p.81]

didn't go.

Q. How old was Reginald -- Reggie, Junior, at that point in time?

A. About 13, 14.

Q. And how did you react to that?

A. I was angry.

Q. How did he react to it?

A. How did he react? He was disappointed.

Q. Did he say anything to you about it?

A. He just wanted to know how come he couldn't go. And I told him the truth. I told him your father said you couldn't come. So he didn't go.

Q. Did he ever see his father after that?

A. He saw his father, as far as I know, once after that.

Q. What other things did Reggie complain about -- Reginald, Junior, complain about in that letter in front of you?

A. Well, he complains about the clothes that he wore. And he said that -- oh, he didn't have the clothing that he wanted, but Rick's dressed better than he did.

Q. Okay. Let's talk about that a little bit.

A. Okay.

Q. Did the children ever complain that they were being neglected for Rick?

A. Not to me.

[p.82]

Q. Okay.

A. Reggie used to say he didn't like him.

Q. When did he say that?

A. When he was young, coming up. And as he got older, he said it again. And I don't know when he was incarcerated a couple of times, he might have told me when he got out he was going to have a fight with him, something like that. I always put it to the fact that he didn't like Rick because Rick wasn't his father. He wanted his dad to be there. I could have been wrong, I don't know. I didn't then I --

Q. Were there ever any occasions of physical violence with Rick that the children witnessed?

A. Yeah, Reggie told me about how he got upset -- well, he -- not upset, he was pissed off with Rick. And he didn't like him because Rick and I had argued and we got into a verbal fight and Rick pulled a gun on me.

Q. Tell us a little bit more about that. What was the circumstances?

A. I don't rightfully remember what the circumstances were, but he pulled a gun on me and had put it to my head.

Q. And did you cry out for your children?

A. I'm not remembering. I might have. When you go through something like that, there's no telling. I

* * *

[p.93]

up to his job one day and they told me he didn't work there anymore. So I'm not sure how long he worked there. Not too long. And so eventually I took the car from him. So .

Q. What was the relationship like between you and Reginald, Junior, at that point in time?

A. It was pretty good. It was okay.

Q. Did you consider yourself to be an affectionate mother?

A. Caring, not a whole lot of affection.

Q. Not a lot of hugs and kisses, kind of stuff?

A. No, I'm not a hug-and-kissy person.

Q. And what was Reggie like?

A. He was caring in his own way, but not huggy/kissy either.

Q. Did he talk much?

A. Only if he wanted to ask for something or needed something. There wasn't a whole lot of conversation.

Q. Did he share much with you about his feelings or anything like that?

A. No.

Q. What kind of holidays did you have, did you celebrate, when they were kids?

A. I've never been big on holidays. Like you said, early off, when I was with their dad, we didn't do holidays

[p.94]

because our religion. And I just never picked up on holidays. There weren't any holiday celebrations actually.

Q. No Christmases or anything like that?

A. No, we didn't do holidays.

Q. Did the kids protest about that any?

A. Yeah, several times.

Q. When Reggie started getting in trouble with the law, do you recall when that was?

A. Yeah, he had a friend that he used to deal with quite a bit. And anyway, a kid reported to the police that Reggie was selling drugs. And so they came to our house, like 3:00, 4:00 in the morning with a search warrant. And came in and -- with guns drawn and fire extinguishers drawn. And I didn't want to know what the fire extinguishers were for. And they said it was because they were told that we had a big dog. And we didn't, we had a puppy. And they went through the house, through the crawlspaces and the dresser drawers and everything looking for drugs. And they didn't find any because Reggie didn't have any drugs in the house.

Q. Okay. How old was Reggie then?

A. About 15.

Q. Was he still in school?

[p.95]

A. Yeah.

Q. When you were married to Reginald Carr, Senior, he had a relationship with his daughter, is that correct, Temica?

A. I've been told that recently.

Q. By Temica?

A. No, by one of the lawyers.

Q. You've never talked to Temica about the relationship with her father?

A. No.

Q. Were you aware of any early sexual activity that Reggie may have engaged in?

A. Yeah, with a neighbor of mine when they were kids.

Q. Can you tell us a little bit more about that?

A. Well, they told me once they got older how the kids were fondling with each other. I don't want to say the kid's name because, you know, this is all going on TV. So -- but they said how they were, you know, experimenting with sex and oral sex and stuff like that.

Q. How old were they?

A. He was just a kid then. A little -- elementary school kid.

Q. Okay. How did you find out about it?

A. Once they got grown, they told me about it. But the

[p.96]

little girl, I caught her once in the backyard with a little boy and told her mom about it.

Q. Do you have any idea what gave them the idea for that stuff?

A. I -- that was the promiscuous little girl, as far as I knew.

Q. How old was the little girl?

A. A year older than Jonathan at the time.

Q. So she was younger than Reggie?

A. Yeah.

Q. And Reggie was in elementary school?

A. Yeah.

Q. At some point in time -- well, did Reggie change schools quite a bit?

A. Yeah.

Q. How many schools do you think he went to before he left school in Dodge City?

A. Maybe six or seven.

Q. Why did he go to so many schools?

A. Mostly because we were bussed and they were changing school assignments. It wasn't mostly because of moving. And so it was mostly because of being bussed.

Q. So every year they changed schools on him?

A. No, they didn't change school every year. I think he -- he started off at kindergarten in the

* * *

[p.107]

Q. Okay. I'm going to hand you what's been marked for identification purposes as Defendant's Exhibit A-17. Ma'am, do you recognize that?

A. Yes.

Q. What is it you recognize that to be?

A. A letter from me to Reggie.

Q. And when was it written?

A. 10-27-01.

Q. Was that letter written in response to one of those critical letters you'd received from Reginald?

A. That's a possibility. I haven't had a time to read it.

Q. Go right ahead. Take a look at it real quick.

A. Okay.

Uh-huh.

Q. Do you recall that letter?

A. Yes, I do.

Q. And was it in response to a letter you received from Reggie, where he was again critical of you?

A. Yeah, I believe it was in response to a letter that he had written me, where he might have told me, where he would have told me, it's not my -- that he did tell me that he was upset with me for one thing or another. And maybe not thinking that there's any love in the family. And I wrote him back to let him know that not

[p.108]

only do I love him, but he's had family and friends that love him, a grandmother that loves him. We do need to talk more. There are things that I wanted to talk to him about, questions that I needed to ask. Or that I wanted to ask. And if there was anything he wanted to question me about, that I was opening up so he could question me. This letter was to let him know that, yes, I do love you, no matter what.

MR. GREENO: Your Honor, we would move for the admission of Defendant's Exhibit A-17. I will provide a copy for the State.

MS. FOULSTON: No objection.

MR. EVANS: No objection.

THE COURT: It's admitted.

MR. GREENO:

Q. And I know this is hard to do, because it's been such a long time ago and sometimes events are difficult to remember, but do you ever recall a time when Reggie had lived with Eric, Junior, his cousin?

A. No.

Q. Do you recall a time when Reggie got shot with a BB gun by his brother Jonathan?

A. Yeah.

Q. Can you tell us about that?

A. Well, we had just moved to Dodge City and the boys

[p.109]

were outside playing. They initially had been in the open field, I'm not sure which one of them, collecting those bullhead snakes and clowned and playing with them. Reggie did something to Jonathan. Jonathan and the little boy next door had the BB guns. And Jonathan got pissed off at Reggie and told him, you better go in the house, I'm going to pop you with the BB gun. And Jonathan told him by the count of something. And Reggie took his time because Reggie was the big brother and not -- didn't believe Jonathan was going to do it. And Jonathan popped him with the BB gun.

Q. And the BB gun -- did the BB lodge in his head?

A. Yeah, it's still up there.

Q. Have you had an opportunity to visit with Reggie, seen him, talked to him lately?

A. Last -- not last week, but the week before, when I came down for court, I had got a special visit to visit with Reggie.

Q. You are kind of in the dark about this case; is that right?

A. Yeah.

Q. Have you followed any of it in the news?

A. I watched some of it. It's kind of hard. These are my children.

[p.110]

Q. You were here for the verdict yesterday?

A. Yes, I was.

Q. And you know what the jury's here to do today?

A. Yes, I do.

Q. Is there anything you would like to tell the jury about what you think they ought to do in regard to his sentence?

A. Yes, I would.

Q. Tell them.

MS. FOULSTON: Your Honor, objection to the form of the question and the request.

THE COURT: I will sustain as to the form of the question.

MR. GREENO:

Q. Ms. Harding --

THE COURT: Go ahead.

MR. GREENO:

Q. -- if you were going to request the jury -- if you were going to request the jury a sentence for Reginald, what would it be?

A. Can you speak up?

Q. If you were going to request -- make a request of the jury as to their sentence and their decision about Reginald's life, what would it be?

MS. FOULSTON: Objection as to relevancy.

[p.111]

THE COURT: I'll overrule the objection.

MR. GREENO:

Q. Answer that.

THE COURT: Do you understand what he's asking? What do you think they should do with their sentence?

A. I believe that my children, Reginald and Jonathan, grew up and were pretty good boys. I believe what happened was a horrible mistake. Things got out of hand. I feel for the other families just as much as I feel for mine. I would ask that their lives would be spared because they're my children and I do love them.

Everybody's hurting now. I'm hurting, the other families are hurting. And we're not supposed to be judges. We're not supposed to judge. And I know the other families are out there and probably just hating me to death right now. And I'm sorry for them. But spare my children. I love them just as much as you would love your children or your grandchildren or your mother, your father. I believe there's good in them, it's just something went wrong along the way.

Q. Anything else?

A. I'd like to tell them that I love them. And I don't know what went wrong, but I love you. I love you both. And I just love you.

[p.112]

And I'm sorry for everything that happened. I'm sorry. If I did something wrong, I'm sorry. If I -- I don't know. I'm just sorry.

I would like to say I'm just sorry to everybody. I don't know if this was my fault. If it was, I'm sorry.

MR. GREENO: Thank you. I don't have any further questions, Your Honor. I'd like to publish the photographs to the jury at this time if that's possible.

A. Sorry.

THE COURT: Let's finish the witness first.

And, Mr. Evans, let's let you do a direct examination and any cross-examination as that field would be appropriate under the particular subject, otherwise --

MR. EVANS: Yes, sir:

THE COURT: -- direct.

DIRECT/CROSS EXAMINATION

MR. EVANS:

Q. I just want to go a few places with you. Do you have any pictures of Jonathan and his father?

A. No, not that I can recall.

Q. Jonathan was --

A. Well, yeah, I got a -- back home a family photo of all

[p.113]

of us.

Q. You have pictures of Reginald and Reggie.

A. Yes.

Q. Any pictures of Jonathan and his father aside from that family photo?

A. I don't recall any pictures of just the two of them.

Q. Do you think it's fair to say that Jonathan never got a chance to know Reginald, Senior?

A. Yes.

Q. Now, Janice, Jonathan was in grade school when he had that matter come up at Harvey Rice school; is that right?

A. Yes.

Q. You know about that, don't you?

A. Yes.

Q. He was living with you when that happened; is that correct?

A. Yes.

Q. He was seven years old?

A. Yes.

Q. What happened? Tell the jury what happened on that deal.

A. He was in the elementary school and they had a fire drill at school. And a little girl in -- I'm not sure if she was in his class or not, accused Jonathan and

[p.114]

four or five other little kids from kindergarten to the third grade of raping her. And the news media came out to the house and the other little kids in school were teasing all the kids and calling Jonathan names. And we all knew it wasn't true. And so that's how Jonathan ended up in Brownsville, Texas.

Q. The case did achieve some notoriety, it was in the newspaper?

A. Yes, it did. It was in the newspaper.

Q. It was known as the Harvey Rice rape case; is that right?

A. Yes, it did -- it was. And they mentioned all of the children's names, the little boys that were supposed to have done this. And after the little girl's home was investigated, it was found that her and her sister both had been molested, but they had been molested by their stepfather. And they, you know, dismissed any charges against the kids. And the stepfather ended up going to jail. But the little girl had no other way to cry that she needed help, so she blamed other children because she was trying to get help.

Q. This is what I'm interested in. What did that do -- what effect did that have on Jonathan as a seven-year-old being accused of this?

A. It hurt him real bad. He didn't want to go to school.

[p.115]

And that was the purpose of sending him to go stay with my sister, so he wouldn't have to be there. Because even when he went to school after it had been brought out that it was the little girl's stepfather that was molesting both of the girls, the kids in school were still teasing Jonathan and the other kids. So one of the little boys lived up the street from us and his parents sent him to stay with other relatives also because of the teasing that was going on with the kids.

Q. Why send him to Aunt Phyllis? Why her?

A. Well, I didn't have anywhere else to send him.

Q. How long was he down living with Aunt Phyllis?

A. He stayed with Aunt Phyllis a little over a year. Because when Reggie went down to visit, they both came back together.

Q. They lived in not only Brownsville, but they also moved to Wichita Falls, Texas; is that correct?

A. Yes. Uh-huh.

Q. Phyllis was transferred to Wichita Falls --

A. Yes.

Q. -- and Jonathan moved with her?

A. Yes.

Q. Did you ever go visit Jonathan in Texas?

A. No, I didn't go visit because I didn't have the monies

[p.116]

to travel.

Q. Eventually Jonathan came back to live with you; is that right?

A. Yes, he did.

Q. Jonathan's relationship with his big brother, Reggie, there's three years difference between them; is that right?

A. Yes.

Q. What was the relationship like as they grew up?

A. They were always real close. Reggie was the oldest brother and Jonathan was the little brother and they were just very close. They played together, they shared rooms together. They were very close siblings.

Q. In your opinion, did Jonathan try to emulate Reggie? Did he look up to him?

A. Yeah. Most younger brothers look up to their big brothers.

Q. Could you see that Reggie was an influence on Jonathan as they grew up?

A. Well, yeah.

Q. There wasn't a man in the house besides Reggie for some of these years; is that correct?

A. Yeah.

Q. And then when Rick Austin came along and you began to live with him, neither of these young men looked to

[p.117]

Rick Austin as their father; is that a fair statement?

A. Yeah, well, he wasn't their dad.

Q. He didn't try to be, did he?

A. Huh?

Q. Is that right?

A. Well, we -- at first we just were dating and then when we got serious, then he started taking over paying bills and stuff like that. But they both knew that he was not their father.

Q. Reggie was about 19 when he was first sent to prison, when he went to prison in Norton; is that correct?

A. 18.

Q. That would make Jonathan 15 or 16 --

A. Yes.

Q. -- right?

A. Uh-huh.

Q. How did Reggie's going to prison affect Jonathan?

A. It hurt Jonathan because that was his brother. And they had always been close and he didn't want his brother to go to jail. And -- none of us wanted him to go and it really hurt Jonathan because he wanted his brother to be there with him.

Q. Anything happen to Jonathan as his brother was going to prison?

A. Well, yeah, he -- well, he did the antifreeze once.

[p.118]

He drank antifreeze. And he was -- he was upset that his brother was in jail. And Reggie showed -- well, he was concerned about his brother because Mandy called Reggie and Reggie called the hospital to speak to Jonathan but he couldn't because Jonathan was in intensive care. And --

Q. From drinking the antifreeze?

A. From drinking antifreeze.

Q. He drank the antifreeze to try to kill himself?

A. Yeah.

Q. This was connected with Reggie going to prison?

A. I think it had a lot of things to do with it. He was upset that his brother was gone. He wanted Reggie home with him. They've always been close.

Q. Now, you said something to me a few weeks before this trial started. You said when Reggie went to prison he was Reggie, when he came out he was "Smoke."

A. Yeah.

Q. Do you recall telling me that?

A. Yeah, he -- he was -- he was just different. When he went in, he was a teenager, my child that, you know, you knew. You could tell his dispositions and, you know, his moods and stuff like that. And when he came home, he was just to his-self. Just kind of standoffish.

[p.119]

Q. You talked to Reggie while he was in prison; is that right?

A. Yeah.

Q. Did he threaten Rick from prison?

A. Yeah, he said he was going to beat him up when he got out.

Q. Did he threaten you?

A. No, he was angry with me behind not visiting the way he felt I should have visited. And --

Q. Let me talk to you about what Jonathan's like when Reggie is around.

A. Uh-huh.

Q. Does Jonathan change when Reggie is around?

A. Well, he likes to do the things and go with Reggie and do things with Reggie. So I would say, yeah, he's a little different when he's with Reggie.

Q. When Jonathan would have been having some interaction with some folks named the Culvers, was Reggie around then or would he have been in prison?

A. Reggie was in jail when he was with the Culvers. Went to visit.

Q. Reggie was in jail when Jonathan was with the Culvers?

A. Uh-huh. Yes.

Q. Did you warn Jonathan to stay away from Reggie when Reggie got out of prison?

[p.120]

A. Yeah, I told him, don't be running around with Reggie because you're going to end up getting in trouble. And I told him -- I told Reggie too, I said leave Jonathan alone, he don't need to be in no trouble.

Q. Jonathan is the baby of your family, right?

A. Yes, he is.

Q. Is your relationship closer with Jonathan than it is with Reggie?

A. Yes, it is.

MR. EVANS: That's all I have, Judge.

THE COURT: Cross-examination, Mrs. Foulston.

CROSS-EXAMINATION

MS. FOULSTON:

Q. Good morning, ma'am.

A. Good morning.

Q. Do you prefer to be addressed as Mrs. Harding or Mrs. Austin?

A. Janice will be fine.

Q. I will call you by your last name.

A. Okay.

Q. And which would you prefer?

A. It doesn't make a difference. I use Harding also.

Q. Okay. Ms. Harding, as you know, I am one of the prosecutors on this case --

[p.121]

A. Yes.

Q. -- involving the conviction of your sons for capital murder.

A. Yes.

Q. And you understand that?

A. Yes.

Q. And I want to go over some of the questions that have been asked of you by both Mr. Greeno, as attorney for Reginald Carr, and by Mr. Evans, as attorney for Jonathan Carr. Okay?

A. (Nods head.)

Q. Do you understand?

A. Yes.

Q. Okay. And would you need some water?

A. No, thank you.

Q. Ms. Harding, did you too grow up in the Cleveland area?

A. Yes, I did.

Q. And what did your father do for a living?

A. My father ran a boiler.

Q. He ran a boiler?

A. A boiler, yeah. He was a boiler room technician guy.

Q. That was before they had centralized heat and air; is that right?

A. Oh, yeah.

* * *

[p.139]

CERTIFICATE

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

I, Sandra J. Berger, a Certified Shorthand Reporter, and a regularly appointed, qualified, and acting Official Reporter of the 18th Judicial District of the State of

Kansas, do hereby certify that as such Official Reporter, I was present at and reported in Stenotype shorthand the above and foregoing proceedings in **Case No. 00 CR 2978, *THE STATE OF KANSAS, Plaintiff, v. REGINALD D. CARR, Defendant,*** and **Case No. 00 CR 2979, *THE STATE OF KANSAS, Plaintiff, v. JONATHAN D. CARR, Defendant,*** heard on the 5th day of November, 2002, before the Honorable Paul W. Clark, Judge of Division No. 9 of said Court.

I further certify that at the request of Debra J. Wilson and Rebecca E. Woodman, Capital Appellete Defenders, a transcript of my shorthand notes was typed by me or under my supervision via computer-aided transcription, and that the foregoing transcript Volume 41-A, consisting of 138 typewritten pages, is a true copy of all of the proceedings, all to the best of my knowledge and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Wichita, Kansas, this 21st day of March, 2003.

/s/Sandra J. Berger
SANDRA J. BERGER
CERTIFIED SHORTHAND REPORTER

SANDRA J. BERGER, CSR
Official Court Reporter

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CRIMINAL DEPARTMENT

Case No. 00 CR 2978
Case No. 00 CR 2979

[Dated November 5, 2002]

THE STATE OF KANSAS,

Plaintiff,

vs.

REGINALD D. CARR,

Defendant.

THE STATE OF KANSAS,

Plaintiff,

vs.

JONATHAN D. CARR,

Defendant.

JURY TRIAL
Volume 41-B

PROCEEDINGS had before the Honorable Paul W. Clark, Judge of Division 9 of the District Court of

Sedgwick County, Kansas, at Wichita, Sedgwick County, Kansas, on the **5th day of November, 2002.**

APPEARANCES

PLAINTIFF:
Ms. Nola Foulston
District Attorney
Ms. Kim Parker
Deputy District Attorney
Mr. Kevin O'Connor
Assistant District Attorney
Sedgwick County Courthouse Annex
535 North Main Street
Wichita, Kansas – 67203

DEFENDANT REGINALD D. CARR (Appearing in person):
Mr. Jay E. Greeno
Of Counsel, REALS & WEBER
Attorneys at Law
Suite 215
250 North Water
Wichita, Kansas – 67202
and
Mr. John V. Wachtel
KLENDA, MITCHELL, AUSTERMAN & ZUERCHER, LLC
1600 Epic Center
301 North Main
Wichita, Kansas – 67202

DEFENDANT JONATHAN D. CARR (Appearing in person):
Mr. Ronald F. Evans
Mr. Mark A. Manna

Attorneys At Law
Death Penalty Defense Unit
Suite 302
112 Southwest Sixth Street
Topeka, Kansas – 66603

SANDRA J. BERGER, CSR
Official Court Reporter

INDEX

Defendants' Witnesses	PAGE
JANICE HARDING	
Redirect Examination by Mr. Greeno	31
Redirect/Cross-examination by Mr. Evans	38
Cross-Examination by Ms. Foulston	40
WILLIAM "BILL" MISKELL	
Direct Examination by Mr. Greeno	49
MARILYN SCAFE	
Direct Examination by Mr. Greeno	58
TEMICA HARDING	
Direct Examination by Mr. Greeno	64
Direct/Cross-examination by Mr. Evans	89
Cross-examination by Ms. Parker	90
Redirect Examination by Mr. Greeno	113
Recross-examination by Ms. Parker	120
PHYLLIS HARDING	
Direct Examination by Mr. Greeno	122

EXHIBITS

Defendant's Exhibits	OFFERED	ADMITTED
Exhibit No. A-31	87	87

CERTIFICATE OF REPORTER 143

SANDRA J. BERGER, CSR
Official Court Reporter

* * *

[p.14]

me, yeah.

Q. Does he ever accept responsibility himself?

A. Yes.

Q. Does he accept responsibility for any action that he's taken that brings you here today?

A. I haven't had a chance to actually talk to him about this.

Q. You said that when your son Reginald Carr went to the penitentiary that he came out as a different type of person.

A. Yeah.

Q. Can you describe the different person that you saw.

A. He was more standoffish, you know, not really wanting to be around much. He'd come for a little bit and leave. But we attributed it -- a lot of it to, you know, he had been in jail, he went in at an early age and that -- I just don't think jail is a good place for anybody. And being around other people that you don't know, you know, you just become different somehow.

Q. You said that in the -- during the time that your children were being raised in the Cleveland area there were a couple of times that issues of sexual fondling or sexual assault came about; is that correct?

A. Yeah.

[p.15]

Q. And were those two separate incidents?

A. Yeah.

Q. And one of them involved Jonathan at a school; is that correct?

A. Yes.

Q. And the second one involved Reginald?

A. And Jonathan, I do believe.

Q. Both the boys?

A. I do believe. I'm not quite sure on that.

Q. And are you saying that at that time that -- I believe you said that you thought that the little girl was probably around eight years old?

A. Uh-huh.

Q. Is that a yes?

A. Yes.

Q. And that you believed her to be promiscuous?

A. Well, yeah, I know she was.

Q. All right. You also said that at a time that your son Reginald had a cousin by the name of Eric; is that right?

A. Yes.

Q. What would Eric's last name be?

A. White.

Q. And I believe you said that at one point that Reginald started to tattoo Eric's name or did tattoo his name

[p.16]

on his arm?

A. Partially. Yeah.

Q. Did he not finish it?

A. No, I don't think he cared much for the feeling of a tattoo.

Q. And did you say that -- I believe that while they were cousins, they weren't really that close?

A. Eric didn't visit my house much and Reggie didn't visit his house much, but when kids are outside playing, they can meet up in neighborhoods because neighborhoods there are small, just like they are here.

Q. Okay. And you also said you didn't remember him going to Eric's funeral?

A. No, he didn't.

Q. Okay. Would there be any reason, then, why you would believe that when Reginald Carr was arrested for this robbery at the Dodge City Community College that he would give the name of Eric White?

A. I have no idea.

Q. Did he feel that close to his cousin, to use his name instead of his own after being arrested?

A. There's a possibility. I don't know how close he feels. That would be like me asking how close you feel to someone. I don't know.

* * *

[p.64]

* * *

TEMICA HARDING,

called as a witness herein on behalf of the Defendants having been first duly sworn, testified as follows:

DIRECT EXAMINATION

MR. GREENO:

Q. Okay. Now, could you please state your name for the jury.

A. Temica Harding.

Q. And, Ms. Harding, are you related to Reginald and Jonathan Carr?

[p.65]

A. Yes, those are both my brothers.

Q. Okay. Can you speak up just a little bit?

A. Uh-huh.

Q. Okay. Now, Ms. Harding, how old are you now?

A. I'll be 28 tomorrow.

Q. Excuse me?

A. I'll 28 tomorrow.

Q. Okay. In the -- chronologically in the children in your family, where do you fall? Are you the oldest?

A. The oldest.

Q. Okay. Who is next?

A. Reginald.

Q. And who is next?

A. My sister Regina.

Q. And who is next?

A. And then Jonathan.

Q. Okay. And where were you born?

A. Where was I born?

Q. Uh-huh.

A. In Cleveland, Ohio.

Q. Do you still have family in Cleveland, Ohio?

A. Yes.

Q. Who lives there?

A. My grandmother on my dad's side and my aunt on my mom's side.

[p.66]

Q. Okay. Who is your grandmother on your dad's side?

A. Dorothy Wiley.

Q. Okay. And your grandmother on your mother's side?

A. Barbara Harding.

Q. And do you have some uncles that live up there?

A. Yes, my Uncle Michael and I think my Uncle Eric, yeah.

Q. Okay. And your father, where does your father live?

A. In California.

Q. When was the last time you saw your father?

A. Probably like, I don't know, fourth or fifth grade.

Q. Excuse me?

A. I think like fourth or fifth grade.

Q. Have you talked to him?

A. No. I tried to call him last night and he wouldn't accept my call.

Q. Okay. When you were born, how old was your mother, do you know?

A. I think my birth certificate is like 14 or 15 years old. I don't know.

Q. When you were first born, where did you stay?

A. I heard I stayed with my grandmother until I was one.

Q. Okay. What was it like in your early childhood, when your mom and dad were still married?

A. At first, I mean, I thought our family was like -- something like the *Brady Bunch,* everybody got along

[p.67]

and we did things like a family and stuff like that.

Q. What kind of things would you do?

A. We would go to the movies together on the weekends and out to dinner, things like that.

Q. Okay. Did you sometimes take family trips?

A. Yeah, we would go out of town. Uh-huh.

Q. Okay. And did there come a time that you recall when there were some problems in the family?

A. Yeah, I think my mother started staying out and not coming home. Yeah.

Q. Okay. Do you recall about how old you were when that happened?

A. It had to have been before I was in the fifth grade.

Q. Okay. And why did it have to be before you were in the fifth grade?

A. Because I went to California when I was in the fifth and sixth grade.

Q. Okay. When they started having these problems, did you see them argue?

A. Yeah, I saw them argue.

Q. Did you ever see them engage in any physical violence?

A. Yeah, I saw my father beat my mother with a stick.

Q. How often would you see them engage in physical violence?

A. I've only seen them twice, but we would always hear

[p.68]

them arguing.

Q. Okay. Did it become pretty frequent?

A. Yeah.

Q. What was the relationship like between Reginald Carr, Senior, and Reggie, Junior?

A. I think -- well, at first, I mean, like I said, we was all like a big family. And then when they got a divorce, I think Reggie always cried -- Reginald always called my father for my father to come get him and things like that. And my father never picked him up or he would tell him he would come and he never showed.

Q. Okay. How did Reginald -- how did Reggie -- I think for the purposes of this questioning I will refer to Reginald as your father; is that all right?

A. Okay. Uh-huh.

Q. And Reggie as your brother, would that be okay?

A. Uh-huh. Yes.

Q. How did Reggie react to that?

A. He would get mad that my dad wouldn't come get him. Because I think he really wanted to be around him since my mother was out doing her thing.

Q. Were you guys pretty much left on your own there for a while?

A. When they were -- before they even got the divorce, my

[p.69]

mother wouldn't come home sometimes. And she would be gone. And when she did come home she would stay there for a couple of days and she would leave back out. My dad took care of us. Or he either took us to my aunt's house.

Q. Okay. What happened after the divorce?

A. After the divorce, I went to California. I went there fifth andr sixth grade.

Q. Why is it -- can I ask you why it is that you went to California?

A. I don't know. My mother just sent me to California.

Q. And who did you live with out there?

A. My Aunt Phyllis.

Q. Okay. And you were there for how long?

A. Two years.

Q. Did your mother ever come out and visit you during that period of time?

A. No, she would write me only when I call her and like be mad at her and tell her that I haven't heard from you. Or if I told her I snatched her picture off the wall or something like that, then she will write me, like, a one-page front letter.

Q. Okay. When is it you came home?

A. After sixth grade.

Q. Okay. And where was home at that point in time?

[p.70]

A. We lived in Garfield Heights in my grandmother's house.

Q. Okay. Garfield Heights is a suburb of Cleveland, Ohio; is that right?

A. Yes.

Q. Okay. And how long did you live there then?

A. I don't remember because we moved a lot.

Q. Where was it that you moved to?

A. I don't remember, because I know before the divorce we moved in with my mom's godparents, Cortez and Bill, and we lived there for a while and then we lived with my Aunt Bernice. And after I came from California we lived at my grandmother's house. Then we moved to a place on Parkview and Martin Luther King and we moved a lot.

Q. Did you change schools a lot?

A. No, not when I was in the seventh and eighth grade. I stayed at the same school. And in high school I stayed at the same school.

Q. Okay. When you were growing up, what was it like around the house? Were there certain that rules you had to follow?

A. When we were still -- when my parents were still married?

Q. Uh-huh.

[p.71]

A. Yeah, there was rules we had to follow.

Q. What kind of rules were those?

A. We weren't allowed to sit in the living room or turn the living room television on. Basically we either had to stay in our bedrooms or we had to go in the basement to play.

Q. What about your mom, was she always available for you?

A. Then?

Q. Uh-huh.

A. When they were married?

Q. Uh-huh. Yes.

A. I think so, yeah.

Q. Okay. What happened when they divorced?

A. When they di- -- well, before they divorced, like I said, my mother was gone. And when they finally

got the divorced, I remember Reggie always asked my dad could he come live with him, can he come live with him. And my dad would say yeah. Like my mom and I got a train -- a plane ticket for him to go to California, and the last minute my dad told him no, he couldn't come. And there was no contact between Jonathan and my father. But with Reggie, I think that he always tried to be around my father. And my father always denied it.

Q. Do you recall when your father remarried?

[p.72]

A. Yeah, he got married someone named Anita.

Q. Did you ever go and visit him when he was married to Anita?

A. I think I went over there maybe one or two times.

Q. Did your father spend any time with you when you went over there?

A. No, we usually went upstairs, like in the attic. They had a family room up there, and played, like, Atari, something like that.

Q. So after the divorce your dad was pretty much out of the picture?

A. Right.

Q. Did you ever have much telephone contact with him?

A. No.

Q. How about Reggie and his father?

A. I don't think so either.

Q. Okay. What kind of discipline did you -- was -- were you subjected to when you were a kid? Who was the main disciplinarian, let me ask that.

A. I think my mother was.

Q. Okay. And how did she discipline you?

A. Sometimes, like if it was Reggie who had to get the whooping, or me, whoever the child was that had to get the whooping, we would lay on the floor, like, with just your underclothes on. And if it was, like,

[p.73]

Reggie, I would have to hold his arms and Jonathan would have to hold his legs. And --

Q. Who made that rule?

A. That was just what we did.

Q. Okay.

A. And then -- I'm sorry.

Q. Go ahead.

A. And then other times when we got whippin's we -- well, myself, I had to take off all my clothes and take the sheets off the bed. And I was, like, placed on the bed like an X, over both corners. And we had to just lay there and get a whopping. And if we got up, then we would get more.

Q. How old were you when this happened?

A. This was before they got the divorce. So --

Q. What about after they got divorced?

A. After they got divorced, yeah, we still got discipline, but it was different. It wasn't the same way. It was more like the cheeks -- my mom took away things that we liked to do.

Q. Were you older then?

A. Yeah.

Q. What about your relationship with your father?

A. I don't have a relationship with him.

Q. Okay. What about back then?

[p.74]

A. Oh, back then? I just remember -- I mean he treated me like I was his daughter.

Q. Did he ever act inappropriately towards you?

A. Yeah, sometimes he would come in my bedroom and he would be smelling like beer or alcohol. And I remember that he came in my room and got in my sheets and he was rubbing on me and touching on me and then he tried to put his penis in, but it was too big and it didn't go in. And I remember when I was little, I remember when this happened, I just kept telling him that you peed in my bed, you peed in my bed because I didn't know what it was.

Q. Did you tell your mom about that?

A. I never told my mom.

Q. Did you tell anybody?

A. No.

Q. Reggie or Jonathan know about that?

A. I don't -- I don't know to this day if Jonathan know. I think Reggie may know because Reggie pays attention to people.

Q. When your mom was married and you guys were all living together, was there any drinking going on in the house?

A. Yeah. I think my mother -- we were Jehovah Witnesses at the time. And my mother stopped going to the

[p.75]

meetings three times a week. And she would, like, smoke when my dad was gone. And then she would open up all the windows and air freshen the room out. And, yeah, there was drinking.

Q. Did you ever notice anybody drinking to excess?

A. I was young, so I didn't know what excessive was. But, yeah, they would be, like, drunk, I guess, now that I think back at it. So --

Q. Well, later on, when you got older and your mom was divorced, what was life like then?

A. When I came home from California, that's my first time I had met Rick. And when I got home I just noticed that Rick and my mother always stayed in the bedroom. This is when we lived in Garfield Heights. And it was just basically me, Jonathan and Reggie, and they was always in they room with the door closed.

Q. Did your mom cook for you and care for you?

A. When I first got around, yeah. But then eventually I started -- I got a job. And I don't know if I was 15 or 16, because you have to fill out paperwork when you were in school to work if you're under age. And I remember getting my brothers and them clothes, school clothes, and sometimes they would wear my clothes to school. And I prepared all -- most of the meals every evening. Got -- when we were little, before we even

[p.76]

got the divorce, I remember getting my brothers and them ready, like get their clothes out to iron and things like that for them.

Q. Okay. Was your mom available during this period of time?

A. After the divorce?

Q. Uh-huh.

A. Not really. No.

Q. How so?

A. Because we -- it was just me, Reggie and Jonathan. We did everything on our own. After we moved out of Gar- -- out of the house in Garfield, my grandmother's house, I believe we moved to, like, a house around the corner, and my mother was never at home, never at home. It was just me, Jonathan and Reggie there, period.

Q. Did Reggie ever talk about his father?

A. To me?

Q. Yeah.

A. No. I just remember just him saying that he wish Daddy would talk to him. And he wished that our parents never got divorced and all that kind of stuff.

Q. Okay. Were there ever any times when you guys were punished for eating all the food?

A. Yeah, my mother -- if we -- my mother, one time, she

[p.77]

stopped going grocery shopping. And she told us that we had to eat what was ever available in the kitchen. And so we just ate, like, the rest of the green beans or something like that. And we boiled noodles and made like a pasta salad thing. And then I remember one time during this whole process -- during this whole time we was frying some onions and my mother and them came running out the -- my mother and Rick came running out the bedroom, like you all throw on some meat, what you all cooking? And I was like, we just cooking onions. So, yeah.

Q. How long did that go on?

A. I don't know, maybe a week or two.

Q. How old were you then?

A. I was in junior high.

Q. After that was over with, did everything kind of get back to normal?

A. It's never been normal since the divorce, no.

Q. Okay. How so?

A. Because we don't have -- I don't have a relationship with my mother now. I mean, I may go through things now and I really don't talk to my mother, I call my aunt. And right now she still sits in her bedroom. So she treats her grandkids better than she treated us but, no.

[p.78]

Q. Okay. What about holidays? Did you guys ever celebrate any holidays?

A. No, we -- before the divorce we was Jehovah Witnesses so we didn't expect to celebrate holidays. But after the divorce, that was something that we was looking forward to. And like it seemed like we was always on punishment when a holiday came around. And I just remember one Christmas -- we didn't even have a Christmas tree. We never decorated or nothing. Or had Halloween costumes or nothing like that. But I remember one Christmas my mother just --

(Off-the-record discussion.)

A. I remember one Christmas my mother just went and bought some, like, Monopoly games and things like that. She didn't even wrap them and just set them outside our bedroom door. And when we woke up and opened the bedroom door, we seen them laying there.

Q. Did you ever have a Christmas tree?

A. No, not until my daughter was born. And she's four now.

Q. Okay. Did you ever threaten to run away from home?

A. I threatened to run away from home, yeah, before.

Q. Why did you do that?

A. Because I had told -- I had told my mother once, I had knocked on her door, and I said, told her, I said,

[p.79]

Mom, since you all got the divorce, I don't think you love us no more. And I said, you spend more time with Rick than you spend with us. I said, before you got the divorce, we was -- you know, we did things together like a family. And now we don't do nothing no more. And my mother got mad at me and, like, beat me up in the corner of the house.

Q. Do you recall a point in time when Jonathan left to go live with your aunt?

A. I just know he went to Brownsville, Texas.

Q. Did he --

A. I don't know where I was at.

Q. Excuse me?

A. I don't know where I was living.

Q. You weren't living at home then?

A. I don't remember.

Q. Do you remember him going to Brownsville?

A. I remember him going to Brownsville, yeah.

Q. Okay.

A. But I don't know where I was at. I could have been living with anybody.

Q. Okay. About how old would you have been if Jonathan was seven years old?

A. I had to be 11 or 12.

Q. Okay. But you think you weren't living at the house?

[p.80]

A. I don't know where I was at. I mean, like I said, I had moved before and went to California. And I guess Jonathan probably had left too. Reggie left too. So I mean, I don't remember when we all were shipped off. I don't remember.

Q. Well, let's talk about that. You got shipped off to California?

A. Uh-huh.

Q. And who did you live with out there?

A. My Aunt Phyllis.

Q. Okay. And Jonathan got shipped off to Brownsville, Texas. And he live with your Aunt Phyllis; is that correct?

A. Right. Oh, I think that happened when he was in grade school. I think it was after that Harvey Rice thing. But I don't think my mother ever explained to us or told us where he went or anything like that.

I think she just said that he went to his grandmother's house or something like that.

Q. So how long was it before you all actually lived together in the same house?

A. We haven't been together since -- we haven't been together, the three of us, until Reggie came home from prison.

Q. Where would they ship Reggie off to?

[p.81]

A. Reggie had went to West Virginia.

Q. For the summer?

A. Don't know how long it was. It could have been for the summer or a year.

Q. Did he go more than once?

A. I think he went twice.

Q. Do you recall when you guys moved from Ohio to Dodge City, Kansas?

A. I didn't move with them.

Q. Okay. You stayed?

A. Yes.

Q. Do you remember the circumstances of when they moved?

A. Like I was saying, we was living in that house by ourself. Our mother always stayed down the street because Rick's -- her new husband, I guess, Rick's parents lived down the street and she was always

down the street with him. So I don't know. I think he was down there hiding, like, in the basement from the police. And I think that's the reason why my mother ended up packing, moving.

Q. Do you know why he was hiding from the police?

A. I don't know. I just know that they used to -- him and his cousin used to -- his cousin used to bring, like, cars to our old house. And we had a two-car garage and they would take them into the -- all the

[p.82]

pieces into the garage. And we would be nosy and go look in the window, but it was like tinted windows so we really couldn't see inside the garage window. But when they brought the cars out, it was like a different car.

Q. Okay. When they left Ohio, where did you go?

A. My -- when I -- when they left, I think I was in the 12th grade. And I said I didn't want to go with them because I wanted to graduate with people I knew. So my mother just left me with people that she knew, some guy named Patrick. And I had never met them until she packed up my stuff and took me over there.

Q. Okay. Are you familiar with the relationship that Reggie had with his cousin Eric, Junior?

A. Yeah, they were real close.

Q. Okay. And how close were they? Can you describe for me a little bit about how frequently they saw each other.

A. Probably every day. They were together every day. They did everything together.

Q. Did Eric, Junior, come over to your house?

A. Yeah, he was over there frequently.

Q. Frequently?

A. Uh-huh.

Q. Did Reggie ever go over to his house?

[p.83]

A. Yes.

Q. Would your mom know that Eric, Junior, would be over there?

A. Some -- well, most of the time she didn't because she stayed down the street with Rick. So she didn't know about the company that we had coming in and out of the house.

Q. Okay. Was Reggie getting in any trouble at that period of time?

A. I don't remember him getting into trouble, no.

Q. Okay. Was he doing things he shouldn't have been doing and not getting caught?

A. Not that I know of.

Q. Okay. Do you recall what happened to Eric, Junior?

A. Yes.

Q. What?

A. On my birthday, [REDACTED], 1993, he got shot execution-style in his head.

Q. And where was that at?

A. In Cleveland, Ohio.

Q. Where was Reggie and Jonathan at that point in time?

A. In Dodge City, Kansas.

Q. Do you recall talking to Reggie about that period of time?

A. I -- he knew about it. And I think he wrote poems and

[p.84]

drew pictures and things like that for my cousin. And I just know that he had, like, put a tattoo of my cousin's name on his arm because he was real hurt over that.

Q. Okay. Do you recall when Reggie went to prison?

A. I was in Cleveland and I worked for a company called Sun TV. And my mother had called me and told me that he went to prison.

Q. What did you do?

A. What did I know about it?

Q. What did you do?

A. I just started crying at work and they let me go home early.

Q. Did you ever go down and visit Reggie?

A. When he was incarcerated, I think I probably went maybe twice.

Q. Okay. Do you have a daughter?

A. Yes, I do.

Q. What's her name?

A. Sier (phonetic) Harding.

Q. And how old is Sier?

A. She's four.

Q. Did she have any contact with Reggie?

A. Just when he came home -- she went to visit him once in -- I think he was in Norton. And she got in

[p.85]

because we had made like my mother was the baby's mother. So that's how she got in; otherwise, she wouldn't have got in. And she visited him once. And then when he came home, she was around him. When he came home from prison.

Q. Did they develop a relationship?

A. Yeah. Yes, they did.

Q. I'm going to hand you what's been marked for identification purposes as Defendant's Exhibit A-31 and ask if you can identify that. Do you recognize that?

A. That's a picture of me.

Q. Okay. And who drew that picture of you?

A. Reggie.

Q. Do you know when it was that he drew that picture?

A. Since he been in the Sedgwick County.

Q. Is there a date on it?

A. March 4, 2002.

Q. Does he draw a lot?

A. All the time. And write poetry.

Q. How long has he been doing that?

A. He drew when we were little. We all drew. They drew people and I would draw cartoons -- more cartoons because I wasn't a people person like they are.

Q. Did Reggie ever complain about your mother?

[p.86]

A. He always would say that he thought that my mother didn't like him because he was the dark one of the family.

Q. Okay. Did he ever complain about her failure to visit him in jail?

A. Yeah. He told her that she lived here in Kansas and she -- she hasn't came up there to see him, maybe three, four, five times. I don't know how many times. And his wife Mandy went up there every weekend. And he would say that you can catch a ride with Mandy, but she never came.

Q. Did you have much contact with Reggie just before he went to prison?

A. Yeah.

Q. What was he like?

A. Before he went to --

Q. Yes.

A. Me?

Q. What was Reggie like before he went to prison?

A. He was nice, he was funny. He -- they didn't do too much. They stayed -- most of the time they stayed in the house and played Nintendo. And we played outside, things like that.

Q. Did you -- and you saw him when he got out of the prison; is that right?

[p.87]

A. Did I saw him when he got out? Uh-huh. Yes.

Q. What was he like then?

A. He was to his-self. He just seemed -- before he even got out, I would have conversations with him on the phone, he just seemed like he completely changed. He was -- he was mean on the phone and would say stuff, like -- like, I'm going to beat you all up when you all come home. Or I want to mess with Jonathan's girlfriends and stuff like that. But he was -- I think he was more mean when he came home.

MR. GREENO: Your Honor, I would move to admit Defendant's Exhibit A-31.

MS. PARKER: No objection.

MR. EVANS: No objections.

THE COURT: It's admitted.

MR. GREENO:

Q. Temica, have you tried to maintain a relationship with your brother since this happened?

A. When he first went to the county, I used to visit him.

Q. Have you lately?

A. I haven't seen Reggie in probably like a year and a half.

Q. And why is that?

A. Because he was mad at me for the guy that I was talking to.

[p.88]

Q. That's the man you were dating?

A. Yeah.

Q. And you've grown apart since then? And you've grown apart since then?

A. Right. Yes.

Q. Temica, do you have any idea what you would like the jury to do in regard to Reggie's sentence?

MS. PARKER: Your Honor, I object to the relevancy of what she thinks.

THE COURT: I'll sustain the objection.

MR. GREENO:

Q. How do you think it will affect you if Reginald Carr is executed?

MS. PARKER: Objection, relevancy.

THE COURT: I'll sustain the objection.

A. You waiting on me?

MR. GREENO:

Q. I'm thinking of a question here. Just a second.

A. Oh.

Q. Are you going to try to maintain a relationship with your brother?

A. Yeah. Yes.

Q. How do you anticipate you'll do that?

A. I have to write him.

MR. GREENO: I don't believe I have any

[p.89]

further questions. Thank you.

THE COURT: Thank you.

Mr. Evans.

DIRECT/CROSS-EXAMINATION

MR. EVANS:

Q. Temica, I would like to talk to you a little bit about the relationship that Reggie and Jonathan had as they grew together. Did Jonathan seem to look up to Reggie?

A. Yes, he did.

Q. Did he follow Reggie?

A. Yes, he did.

Q. Reggie was different when he came out of prison, that's what you just told Mr. Greeno, right?

A. Yes, sir.

Q. Did you warn Jonathan that you got to stay away from Reggie?

A. I told him all the time.

Q. He didn't listen to you, did he?

A. No, he didn't.

Q. You visited -- you visited both of them since they've been in the Sedgwick County Jail; is that right?

A. Yes.

Q. Jonathan more than Reggie?

A. Yes.

[p.90]

Q. Did you have a conversation with Reggie about what happened that night in the snow?

A. Reggie really never talked about it that often. He really didn't say anything about -- about this case.

Q. Did Reggie tell you he was the one that shot those people?

A. Yes.

Q. Did he tell you he shot all of them?

A. I don't remember the conversation.

Q. If the jury saw fit to spare Jonathan's life, would you maintain contact with him while he's in prison?

A. Jonathan?

Q. Yes.

A. Yes.

MR. GREENO: That's all I have, Judge.

THE COURT: Thank you.

Cross-examination, Ms. Parker.

CROSS-EXAMINATION

MS. PARKER:

Q. How old are you again, Temica?

A. I will be 28 tomorrow.

Q. 28. And how much older are you than Reginald Carr?

A. Three years.

Q. And how much older are you than Jonathan Carr?

A. Six years.

[p.91]

Q. And I think some of the last things you just said is that you took care of the boys in your relationship with them?

A. Yes.

Q. And some of the things you've described, it was you, not them, that was sexually molested; is that right?

A. To my knowledge, I know about myself, I don't know about them.

Q. It would be a surprise to you if you learned that?

A. Right. Since this case has started, I've heard things that I didn't know had happened.

Q. Well, most the time it sounded like they were in your care. These boys were in your care.

A. Yes, I took care of them when my mother was still there.

Q. And I think you described at first that your family before the divorce was kind of like the *Brady Bunch?*

A. That's correct.

Q. But then you also described that the physical spankings where you had to hold each other down ended after the divorce?

A. No, that was during the divorce -- during their marriage, when we got whoop- -- spankings like that.

Q. And then those ended, and after the divorce the discipline was in the nature of restrictions?

[p.92]

A. That's correct.

Q. And would it be fair to say that you've -- that you've suffered the same parental environment that your brothers grew up in? Do you have the same mom?

A. Yes, we have the same mom.

Q. Did she treat you special? Did you get all the clothes?

A. I provided for myself.

Q. You provided your own clothes?

A. Yes.

Q. You even provided them for your brothers?

A. Yes, we shared clothes. When I bought clothes, I would buy them clothes as well. Maybe one or two outfits. And they also shared the clothing that I wore.

Q. You gave them love?

A. Yes.

Q. Is that what they gave back to you?

A. Yes.

Q. You said that Reginald was nice before he went to prison?

A. Yes.

Q. Does that include how nice he was to the woman at the book store with the *Jason* mask, telling her he was going to shoot her and took all her money?

[p.93]

A. I don't know anything about that. I stayed in Ohio at the time.

Q. Does it include the fights he was in?

A. When he was in junior high? I stayed in Ohio. I'm just now learning about the things that got him put in prison when I watched the news last night.

Q. So maybe you don't know whether he was nice?

A. He was nice when we were younger, yes.

Q. When did he stop being nice?

A. Well, like I said, they moved away. So we didn't have any more communication at the time.

Q. And that was when?

A. When I was in 11th -- going to 12th grade.

Q. And how old was Reginald then?

A. I guess I must have been 17, so he probably was 14. 13 or 14.

Q. And where did he live?

A. When -- before they moved? We all lived together.

Q. Where did he live when you separated?

A. Him -- he went to Dodge City with my mother.

Q. And that's where your Aunt Phyllis Harding lived --

A. Yes.

Q. -- the doctor?

A. Yes.

Q. Has your aunt provided for -- for you?

[p.94]

A. She gave me $800 once to buy a car. And if I call her and ask her for something, then she does it for me, yes.

Q. She gives money to your brother Reginald Carr to bail him out?

A. Yeah, she did.

Q. How many times?

A. I don't know how many times. But I know --

Q. Did he pay her back?

A. Has he paid her back?

Q. Uh-huh.

A. We've never paid her back. And she's never asked us to pay her back.

Q. Did she -- did she provide clothing for your brothers?

A. When they lived in Dodge, I don't know because I lived in Ohio.

Q. It was when they were in Dodge they began getting into serious trouble with the law?

A. That's correct.

Q. Both of them?

A. That's correct.

Q. Jonathan and Reginald?

A. Yeah, I think Reggie got in trouble first.

Q. Both of them had a number of arrests?

A. See, I don't know about all that because it was never

[p.95]

told to me because I stayed in Ohio.

Q. So your opinion that Reginald Carr is nice and your brother Jonathan Carr is nice, you don't really know what they were doing for a number of years; is that correct?

A. Once they moved to Dodge, that's correct.

Q. So everything they did since they've been in Dodge has no bearing on your opinion about them being nice?

A. Right, because I didn't know what they were doing.

Q. How about the drugs, the possession of methamphetamine by your brother Reginald Carr?

A. I didn't learn nothing about that until last night when I watched the news.

Q. How about the diversion in Gray County, Kansas, for aggravated indecent solicitation of a child, his first offense in '94, do you remember that?

A. That's -- this is my first time hearing anything about that.

Q. So those are the things that you wouldn't have known about in determining whether or not he was nice?

A. No, because those are the things that happened once he moved to Dodge City, if they -- if that's what happened.

Q. His cousin that he was close to, Eric White, after he was deceased, in Dodge, shot in the head, you know

[p.96]

your brother Reginald Carr used his name as an alias when he was arrested, did you know?

A. No, I didn't.

Q. This tattoo that your brother Reginald Carr has, is it a complete name of Eric?

A. I think it just -- I don't know, I think it just say "Eric," I don't know.

Q. Okay.

A. Or "E." I don't know. I don't remember.

Q. Does he have any other tattoos?

A. I don't know if he does.

Q. Have you ever seen that *Jason* mask that Reginald used? Did you ever see that in your home?

A. I didn't live in Dodge. I stayed in Ohio.

Q. Were you in Ohio when Jonathan ran off without court permission to Ohio?

MR. EVANS: Your Honor, again I'm object to this line of inquiry. It doesn't go to any aggravator. Certainly it wasn't opened up by anything I asked her on direct examination.

THE COURT: I'll overrule the objection.

MS. PARKER:

Q. Did he --

A. I'm sorry.

Q. Did he come to you?

[p.97]

A. Did he move to Ohio with me?

Q. Uh-huh.

A. Yes, he did.

Q. How many times did he come up to Ohio?

A. Oh, I think twice.

Q. Did you care for him?

A. Yes, I did.

Q. Did he work?

A. No, he didn't. He just went to school.

Q. Did your brother Reginald Carr work as far as you know?

A. Did he ever work? Yes, he's had jobs before.

I'm sorry, Jonathan did have a job when he was in Cleveland. He worked at McDonald's down the street from our house.

Q. Did they ever have problems with their probation because they failed to keep jobs?

A. I don't know anything about that.

Q. Was Jonathan arrested for a carjacking in Ohio?

A. Yes, I think. I don't think it was a carjacking. I don't -- I mean is it carjacking when you -- some people are in the car and they do something?

Q. Right. He come up to the guy at a Quiktrip with the gun?

A. I don't know if it was a Quiktrip. I don't know if he

[p.98]

had a gun or not. I just know they had reported that he had stole a car.

Q. Do you remember that the victim was in the vehicle?

A. I don't remember that. I remember that -- it was told to me that he was in the store and he came out and just got in the car and know that the people had left -- the people had went into the car, whoever the person was.

Q. Do you recall that Jonathan was accused of pushing the man?

A. No.

MR. EVANS: Your Honor, renew my objection. I would ask for a continuing objection about this line of questioning. It doesn't go to any aggravator, it's uncharged, unconvicted conduct. Objection.

THE COURT: I will overrule the objection. I'll give you a continuing objection to the line of questioning, though.

MS. PARKER:

Q. Did -- when you were in Ohio, did you have contact with your grandmother, Barbara Harding?

A. Yes.

Q. So you were exposed to her?

A. Yes.

Q. Exposed to your mother and the kind of raising that

[p.99]

she -- that she involved herself in regarding your parenting?

A. Yes.

Q. And you have a job?

A. Yes.

Q. And we saw pictures of your home on Poplar.

A. Yes.

Q. You keep it very clean?

A. Yes.

Q. Who taught you to do that?

A. My mother kept her house clean.

Q. Did your mother work?

A. No. Did she work?

Q. Did she have a job?

A. No, my father took care of us.

Q. So when your mother came in here -- you don't remember her having jobs? She testified that she'd had jobs.

A. After the divorce, I believe she did keep a couple of jobs here and there. That's when she was with Rick. But before the divorce, she didn't work.

Q. But after the divorce, as a single mom she worked?

A. Yeah. She kept maybe one or two weeks.

Q. It would have been her that paid for the green beans and the fried onions?

A. Yes.

[p.100]

Q. And the pasta salad --

A. Yes.

Q. -- that you had to eat?

A. Yes.

Q. When your mother was here, she said that Regina, your sister that died of leukemia when she was two -- is that right? Is that how old she was when she died?

A. I don't know how old. I just remember waking up and she was on my floor.

Q. She said something about -- now, Regina would have been how much older than Reginald?

A. She was underneath Reggie.

Q. She was younger?

A. Yes.

Q. How much younger?

A. Like a year, I guess. I don't know.

Q. Your mom had said that she used to be mean to Reginald and point her finger at him.

A. Yes, sir.

Q. Do you remember that?

A. Uh-huh.

Q. Did she point her finger at you too?

A. She only did that to Reggie.

Q. And that was when she was two?

A. Right.

[p.101]

Q. Your mom told us about a time when your brothers got involved with a little fondling with the neighborhood girl that was promiscuous. I think the girl was eight and she was a year older than your brother Jonathan. And so Reginald would have been a few years older than she was. Do you remember that incident?

A. I guess you're referring to Amber? Yes.

Q. Amber?

A. Uh-huh.

Q. And so they were involved -- both your brothers were involved in fondling Amber?

A. Yes.

Q. Or she was fondling them?

A. Yeah. Vice versa, yeah.

Q. Because she was promiscuous?

A. Yes.

Q. So she was eight and Reginald would have been how old?

A. I don't know because I need to know a year so I can figure out.

Q. Well, let's see, Jonathan was seven, according to your mom, the girl was eight, Jonathan is three years younger than Reginald?

A. I think two.

Q. Two years younger than Reginald?

A. Yeah.

[p.102]

Q. So Reginald would have been nine or ten?

A. Right, nine.

Q. In the year 2000, Jonathan Carr came to live with you in Wichita?

A. Yes, he came for -- he actually didn't come to live. He just came to watch my daughter until I found daycare.

Q. Okay. And was he employed then?

A. No.

Q. You let him stay at your home?

A. Yes.

Q. Did you let him use your vehicle?

A. Yes.

Q. Who paid for your vehicle?

A. I paid for it.

Q. Did Jonathan have a vehicle?

A. No.

Q. Did Reginald come to town?

A. Yes.

Q. Where did he stay?

A. He either stayed with -- I didn't know her name was Stefanie at the time, but he either stayed over there or sometime when I wake up in the morning he would be, like, laying on my couch or in Jonathan's room asleep.

Q. So you allowed him -- Reginald to stay at your home as

[p.103]

well?

A. Yes.

Q. And was Reginald employed?

A. No.

Q. Now, there's been testimony that one of the things Reginald -- well, your mom said -- she didn't indicate whether he did that here, but that in the past he had -- her home had been raided in Dodge City for drugs because the police had been given some information about Reginald selling drugs.

A. I heard about that.

Q. Did you know that information when you allowed them to stay in your home?

A. Yes.

Q. You said that after Reginald Carr got out of prison, that's when he got mean?

A. Right. He was mean while.

Q. He was mean to you?

A. He was mean while he was in prison. I mean through our conversations over the phone.

Q. So before prison he was nice to you. You don't know about anything he did to anyone else during that time?

A. Right.

Q. And then while he was in prison and after, he became mean to his sister; is that right?

[p.104]

A. He was mean to everybody. Before he -- before he went to prison, he was just like a regular kid, a regular boy, playing outside and playing Nintendo.

Q. Ms. Harding, was he mean to you?

A. He was mean, yes, to everybody.

Q. To you?

A. Oh, to me?

Q. To you.

A. He would just say mean things to me, yes.

Q. And are you the same sister that helped put clothes on his back and make sure he was fed when he was a child when your momma was gone?

A. Yes. He's still my brother regardless.

Q. Yes, he is. He was mean to Jonathan then, too, I think you said. He said he was going to mess with Jonathan's girlfriends?

A. Right.

Q. What does that mean, "mess with"?

A. It could have been like a joking thing because that's how we always took it as.

Q. Is that sexual?

A. I don't think it was sexual, no.

Q. Is it physical?

A. No, I think -- I mean, because when you a teenager and you grow up, I mean you may have one girlfriend and

[p.105]

then your brother may -- I mean like play jokes on the girl to see if the girl's to be faithful to you or not, things like that.

Q. Did he tell you he was going to beat you up over the phone?

A. Yeah, he would joke around like that over the phone.

Q. I'm sorry, I thought you said he was being mean. I didn't know he was just joking.

A. He was being mean, however, we took it as a joke when he would say sarcastic things like that because when he came home he never did none of the things that he said he was going to do. He just always seemed negative over the phone.

Q. So when he came home from prison, then, he was nice again?

A. When he came home from prison he never carried out those things that he said that he would do over the phone.

Q. He never beat you up?

A. No.

Q. He never messed with Jonathan's girlfriends?

A. No.

Q. How many girlfriends did Jonathan have?

A. When he lived in Wichita he had -- I know he had one main girlfriend, but I mean he had a lot of female

[p.106]

friends.

Q. You had talked about whether or not you had visited Reginald Carr while he's been in custody. How many times did you say you visited him?

A. This was in the beginning. I didn't visit him that much because I was mad about this whole situation.

Q. Uh-huh. Why were you mad?

A. Because I was just thinking about what happened and we was just all trying to put -- piece stuff together.

Q. Aren't you still mad?

A. Am I still mad?

Q. Aren't you still mad?

A. I'm upset because it's only three siblings and I'm going to be the only one left. Yes, I'm still upset.

Q. You still have your job?

A. I don't work for my job anymore. And my apartment got vandalized because of this case. So I'm --

Q. Did you move?

A. I moved to Dodge City, but I have this apartment complex all on my credit now because of this.

Q. And you didn't do any of it, did you?

A. No, I didn't.

Q. But you've suffered consequences of --

A. Yes.

Q. -- the actions of the brothers you took care of?

[p.107]

A. Uh-huh. Yes.

Q. When your brothers were here in Wichita, did they have clothes?

A. Yes.

Q. Do you have a television in your house?

A. Yes.

Q. Have more than one television in the house?

A. I only had one at the time.

Q. Did you restrict your brothers to a room that didn't have a television?

A. I just told them that my daughter's room, that they could have that room. And, no, I didn't have a television in it.

Q. Could they watch television in your house?

A. They can watch it whenever they wanted to. I wasn't a television person.

Q. Could they listen to the stereo in your house if they wanted to?

A. Yes. They just was -- I just told them not to turn it up loud. And when they finish with it to turn it off so that when you turn it back on the speakers wouldn't burst.

Q. Do you have a computer your house?

A. Yes.

Q. Could they use -- could they have used your computer

[p.108]

if they wanted to use a computer?

A. If they wanted to, but I don't think they knew too much about computers.

Q. You were working, did you have food in your house?

A. Yes.

Q. Would you let your brothers eat at your house?

A. Yes. I would try to cook enough to feed everybody, but I never really cooked enough. So they always ended up going out after they ate at my house too.

Q. Where did they get money to go out?

A. I never questioned where they got it from. I just assumed that Reggie's girlfriend gave him money. And then maybe my aunt sent him money.

Q. And your aunt did send him money, didn't she?

A. She has, yes.

Q. To both Jonathan and Reginald?

A. Yes.

Q. Did you give them any money?

A. I wrote Reggie once a check. I think it was for like $50.

Q. As far as you know, when Reginald had to stay over or did stay over at Stefanie Donley's, she would give him food if he needed it?

A. Yes.

Q. Your brothers had these leather coats. Did you see

[p.109]

them with those leather coats?

A. Yes.

Q. Did you buy those for them?

A. No.

Q. Who paid for the leather coats that they wore around?

A. I don't know. They had them for a while.

MR. GREENO: Your Honor, I'm going to object. This is outside the scope of direct examination and I don't see the relevance.

MR. EVANS: I join.

THE COURT: I'll overrule on both grounds.

A. I don't know who paid for them. Could have been my aunt. They had them for a while.

MS. PARKER:

Q. In your home -- there is a picture of the room that you let your brothers stay in.

A. Uh-huh.

Q. And it appears that there are other coats and other folded clothing items in that room.

A. Right.

Q. Were those yours or were -- did they belong to your brothers?

A. They belonged to them.

Q. So when it got cold outside, they had something to wear?

[p.110]

A. Yes.

Q. Do you have remotes that went with your TV?

A. Yes.

Q. So if they needed to turn it on from a sitting position, they could use your remote?

A. Yes.

Q. Did you keep contact with your mother while you were living in Wichita?

A. I kept contact only because of my daughter. She -- that was her granddaughter.

Q. And so when you kept contact with that person, did you call her -- for that reason, did you call her frequently?

A. Yes.

Q. So despite your mother's long absences while you were a child, as you've described, you have a desire to have your daughter involved with her?

A. Right. Because she -- like I said, she treats the grandchildren different. Better.

Q. And you told us that your brother Reginald Carr said that he personally shot these people?

A. I believe I heard him tell me something like that. I don't remember.

Q. You don't remember?

A. Right. I believe he told me something like that, but

[p.111]

like when he asked me who he shot and all that, I don't remember who was, you know, shot by who.

Q. And is he the one that during jury selection you brought your daughter up to see?

A. When did I bring her up? Into the courtroom? Oh, yeah.

Q. A couple of times.

A. Yeah, yeah, when we set in the middle there, yes.

Q. And was this after he told you he personally shot these people that you brought your young daughter here to see him?

A. Yes.

MS. PARKER: Just a moment.

MS. PARKER:

Q. You had said that you had kept contact with your mother while you were here in Wichita. Did you keep contact with your mother while you were in Ohio and she and your brothers were in Dodge City?

A. Not -- no, it was very rare.

Q. Did you have contact with her while you were in Ohio regarding the problems your brothers were having?

A. No, she would just call me and, like, tell me Reginald went to jail. And I never really knew the reasons why they were in trouble or anything like that. I didn't know until I saw the news last night.

[p.112]

Q. You didn't know they were in trouble?

A. No, I didn't know the reasonings behind why they were in trouble until I saw the news last night.

Q. So you have since learned about the threat to the individual at the Community Corrections about putting a pencil through her throat?

A. Right. I saw that on the news last night.

Q. That was your brother Jonathan?

A. Right. That's what they said.

Q. That is not something that you knew prior to that?

A. No.

Q. So in other words, a lot of your impressions of your brothers, you don't have all the information and you're just now learning it?

A. When it comes to the reasonings why they were in trouble or going to jail or something like that, no, I didn't know anything about that.

Q. All the times that you visited Jonathan Carr while he's been in the jail --

A. Yes.

Q. -- you never discussed his history?

A. What do you mean *history*? His life as a kid?

Q. His life as a kid which would include his history with law enforcement and other people that he -- he's had problems with.

[p.113]

A. No.

Q. What kind of history did you talk about?

A. We didn't talk about a history, nothing like that. It was -- me and his conversations were always like what did you do today or what's going on in Wichita, how is your daughter, things like that. We really didn't talk about our past.

MS. PARKER: Thank you, Ms. Harding.

* * *

[p.143]

CERTIFICATE

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

I, Sandra J. Berger, a Certified Shorthand Reporter, and a regularly appointed, qualified, and acting Official Reporter of the 18th Judicial District of the State of Kansas, do hereby certify that as such Official Reporter, I was present at and reported in Stenotype shorthand the above and foregoing proceedings in **Case No. 00 CR 2978, *THE STATE OF KANSAS, Plaintiff, v. REGINALD D. CARR, Defendant,*** and **Case No. 00 CR 2979, *THE STATE OF KANSAS, Plaintiff, v. JONATHAN D. CARR, Defendant,*** heard on the 5th day of November, 2002, before the Honorable Paul W. Clark, Judge of Division No. 9 of said Court.

I further certify that at the request of Debra J. Wilson and Rebecca E. Woodman, Capital Appellete Defenders, a transcript of my shorthand notes was typed by me or under my supervision via computer-aided transcription, and that the foregoing transcript

Volume 41-B, consisting of 142 typewritten pages, is a true copy of all of the proceedings, all to the best of my knowledge and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Wichita, Kansas, this 21st day of March, 2003.

/s/Sandra J. Berger
SANDRA J. BERGER
CERTIFIED SHORTHAND REPORTER

SANDRA J. BERGER, CSR
Official Court Reporter

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CRIMINAL DEPARTMENT

Case No. 00 CR 2978
Case No. 00 CR 2979

[Dated November 6, 2002]

THE STATE OF KANSAS,)
)
Plaintiff,)
)
vs.)
)
REGINALD D. CARR,)
)
Defendant.)
)
THE STATE OF KANSAS,)
)
Plaintiff,)
)
vs.)
)
JONATHAN D. CARR,)
)
Defendant.)

JURY TRIAL
Volume 42

PROCEEDINGS had before the Honorable Paul W. Clark, Judge of Division 9 of the District Court of

Sedgwick County, Kansas, at Wichita, Sedgwick County, Kansas, on the **6th day of November, 2002.**

APPEARANCES

PLAINTIFF:
Ms. Nola Foulston
District Attorney
Ms. Kim Parker
Deputy District Attorney
Mr. Kevin O'Connor
Assistant District Attorney
Sedgwick County Courthouse Annex
535 North Main Street
Wichita, Kansas – 67203

DEFENDANT REGINALD D. CARR (Appearing in person):
Mr. Jay E. Greeno
Of Counsel, REALS & WEBER
Attorneys at Law
Suite 215
250 North Water
Wichita, Kansas – 67202
and
Mr. John V. Wachtel
KLENDA, MITCHELL, AUSTERMAN & ZUERCHER, LLC
1600 Epic Center
301 North Main
Wichita, Kansas – 67202

DEFENDANT JONATHAN D. CARR (Appearing in person):
Mr. Ronald F Evans
Mr. Mark A. Manna

Attorneys At Law
Death Penalty Defense Unit
Suite 302
112 Southwest Sixth Street
Topeka, Kansas – 66603

SANDRA J. BERGER, CSR
Official Court Reporter

INDEX

Defendants' Witnesses	PAGE
DAVID PRESTON, M.D.	
Direct Examination by Mr. Greeno	6
Voir Dire Examination by Ms. Foulston	15
Continued Direct Examination by Mr. Greeno	30
Voir Dire Examination by Ms. Foulston	34
Continued Direct Examination by Mr. Greeno	36
Voir Dire Examination by Ms. Foulston	44
Continued Direct Examination by Mr. Greeno	48
Voir Dire Examination by Ms. Foulston	63
Continued Direct Examination by Mr. Greeno	68
Cross-examination by Mr. Evans	75
Cross-examination by Ms. Foulston	81
Redirect Examination by Mr. Greeno	103
AMANDA CARR	
Direct Examination by Mr. Greeno	106
Cross-examination by Ms. Parker	121
Redirect Examination by Mr. Greeno	138
Recross-examination by Ms. Parker	140
LEROY CULVER	
Direct Examination by Mr. Evans	142
Cross-examination by Ms. Foulston	145
JUANITA CULVER	
Direct Examination by Mr. Evans	148
Cross-examination by Ms. Foulston	151

RICHELE COSSMAN

Direct Examination by Mr. Greeno	165
Cross-examination by Ms. Foulston	176
Redirect Examination by Mr. Greeno	187
Recross-examination by Ms. Foulston	188

EXHIBITS

Defendant's Exhibits	OFFERED	ADMITTED
Exhibit No. JC-2	76	77
Exhibit No. A-20	114	114
Exhibit No. A-21	114	114
Exhibit No. A-23	117	118
Exhibit No. A-24	117	118
Exhibit No. A-25	115	115
Exhibit No. A-26	115	115
Exhibit No. A-27	111	111
Exhibit No. A-29	120	120
Exhibit No. A-30	116	116
Exhibit No. A-35	55	56
Exhibit No. A-36	55	56
Exhibit No. A-38	57	57
Exhibit No. A-41	32	33
Exhibit No. A-42	32	33
Exhibit No. A-43	170	170
Exhibit No. A-44	172	172
Exhibit No. A-45	166	167
Exhibit No. A-46	167	168
Exhibit No. A-50	168	169

CERTIFICATE OF REPORTER 198

SANDRA J. BERGER, CSR
Official Court Reporter

* * *

[p.8] [*Cont. Direct Examination of David Preston, M.D. by Mr. Greeno*]

There are -- most of the work, however, is done for diagnostic purposes, helping the clinician identify disease process and how far it has progressed. We have work in -- with oncology, that is for cancer work, for the treatment -- the treatment of thyroid cancer and the treatment of overactive thyroid glands. Diagnosis includes a good bit of work in the brain, but with the PET imaging, as well as with what's called SPECT imaging, which is single photon emission computed tomography imaging, bone scanning, lung scanning, looking for pulmonary emboli, looking for silent infarctions, miocardia infarctions using radioactive tracers. That has been a big success story in the last ten years or so.

Q. Have you published?

A. Yes.

Q. What have you published?

A. I -- it's in my CV I have probably six or seven book chapters and probably some 60 or 70 exhibits. Scientific exhibits at the Society of Nuclear Medicine meeting over the past 30 or 40 years or so. And also at the Radiological Society of North America, which is the big international meeting in Chicago. Exhibits, as well as book chapters, individual papers on the early detection of breast cancer using a radio tracer

[p.9]

that I have been involved in developing. And -- but in most organ systems, the heart, the lung, the brain. Bones. Numerous publications. Perhaps 60 or 70.

Q. How long have you been involved in nuclear medicine?

A. Since 19- -- since the summer of 1963 actually. Almost 40 years.

Q. Have there been a lot of developments recently in that area?

A. Yes, there have been.

Q. You mentioned PET imaging.

A. Yes.

Q. Can you tell us what that is.

A. PET imaging is a -- it is a special technique which uses positrons. That's what the "P" in the PET stands for. PET stands for positron emission tomography. And there are -- positrons are actually antimatter. And those of you who watch -- have ever seen *Star Trek*, you know that antimatter is what makes the *Starship Enterprise* run.

Well, there really are things like that. And in fact, there are certain radioactive atoms that decay in a specific way that -- where the nucleus emits a positron. And this finds a real world electron and the positron and the electron annihilate themselves and turn into basically two high energy

[p.10]

x-rays which go off in opposite directions. And the PET detection is done by placing detectors 180 degrees apart, or ideally in a ring around the patient or subject, or whatever it is you're looking at, and recording the data, the position of where these -- these things come from, where these -- where these positron/electron interactions occur. And you are then able to plot back to -- in space to where this thing occurred.

Now, that may sound a bit far-out. But actually what happens is, especially in brain PET imaging with fluorodeoxyglucose, is that you take a molecule that is very similar to glucose and you stick on it a fluorine-18 atom and you then inject it into the patient. And this material goes to wherever there is metabolism. And the three areas that will go to primarily will be the brain, the heart and the liver. You'll see some go down in the kidneys and so forth, but it also then goes to various cancers that may appear in the body. And you're able to see in the brain strokes as areas of decreased metabolism and you're able to see areas of brain tumor, you're able to see places in the brain that are not working.

Q. So is PET scan technology generally used to detect brain abnormality?

* * *

[p.35] [*Cont. Voir Dire Examination by Ms. Foulston*]

of the University of Kansas Medical Center talked about the -- the remarkable PET images that are computer noninvasive scans; is that correct?

A. Yes.

Q. And it is talking about the technology; is that right?

A. Yes.

Q. And it in this article in no way suggests that it is for use in forensic evaluation of individuals charged in capital cases; is that correct?

A. Yes, that's correct.

Q. And again, you are called upon here to explain your findings on Reginald and Jonathan Carr?

A. Yes.

Q. And you have told us that it is the PET scan is not accepted to predict or explain criminal behavior; is that yes or no?

A. Well, that's what you have said.

Q. You said no twice. I guess my --

A. Okay. I guess I will say no again, then.

MS. FOULSTON: All right. Your Honor, I object. It becomes not relevant when the witness has identified the examination as not accepted to predict or explain criminal behavior. And that he has been called upon to explain criminal behavior, that which the PET scan cannot do and is not accepted, as the

[p.36]

doctor said, in the forensic area to predict or explain criminal behavior. Therefore, becomes not relevant.

THE COURT: Thank you. I will find that Dr. Preston is qualified to render an opinion in nuclear medicine and endocrinology, diagnostic technique in cancer and the other areas that he has talked about in diagnostic technique that's been set out. The -- I will further find that he's qualified to render an opinion in the technique of the PET imaging and the reading and use as a diagnostic technique in those areas in which he's qualified.

I'll find that he's not qualified -- nothing has been shown to qualify his rendering opinion in a forensic determination of behavior. Those accused of crime based on images made with a PET test of their brains.

MR. GREENO: Thank you, Your Honor. May I proceed?

THE COURT: Yes, sir.

MR. GREENO: Thank you.

CONTINUED DIRECT EXAMINATION

MR. GREENO:

Q. Dr. Preston, let's say as a diagnostic tool, we're talking about the PET scan here, would a common

[p.37]

scenario be that an individual has given us a battery of neuropsychological testing and an individual that is evaluating that finds -- makes certain findings, would they -- would they ask for a PET scan to try to verify the results of their testing?

MS. FOULSTON: Objection, Your Honor, to the form of the question.

THE COURT: Compound. I think there's three questions there.

Did you understand it or would you rather have him do it one at a time?

THE WITNESS: I think we better do it one at a time.

THE COURT: Let's do it one at a time.

MR. GREENO:

Q. Let's say an individual is given a set -- a battery of neurological/psychological testing. Do you understand what that is?

A. Yes.

Q. And when neuropsych testing is done, those -- that testing is evaluated; is that correct?

A. That is correct.

Q. And let's say the person that evaluates that test finds a problem --

A. Yes.

* * *

[p.68]

color.

MS. FOULSTON: I think we've explained that, Your Honor, and I still have an objection as to relevancy, but I think that the doctor has explained

the foundation of the location of A-39 as among the data that he collected.

THE COURT: I'll admit it.

MR. GREENO: Thank you, Your Honor.

CONTINUED DIRECT EXAMINATION

MR. GREENO:

Q. Okay. Doctor, as I understand it, with positron emission tomography technology, you are able to get a bunch of data and because of the technology you have, you are able to view it in -- from different aspects; is that correct?

A. Yes, yes.

Q. And what we see in this particular set of slides is going from -- is that back to front or front or back?

A. Front to back.

Q. Okay. Straight through?

A. Yes.

Q. And Exhibit No. 39, which has been admitted, it is a view that slices through, but it's on an angle; is that correct?

A. Let me make sure.

[p.69]

Q. That one right there.

A. This one?

Q. Yeah.

A. Yes, this is on an angle. And these are down like this, about at this orientation (indicates).

Q. Okay. And you are -- for the record, your hand has been going across the side of your head and it indicates it's higher in the back and lower in the front?

A. Correct.

Q. Does that give you a larger view of the temporal lobe?

A. Yes.

Q. And is that the area of the brain that you found was involved in this PET scan?

A. Yes.

Q. Okay. Okay. That's Exhibit No. 39. We've got you hooked up to a wireless now and you've got your pointer, can you get up there and --

A. Yeah. Right now.

Q. -- and show us what the relevance of this is?

A. Thank you. That will help my voice.

These are the tips of the temporal lobes. The nose is pointing up here, the back of the head is down here, left is there, right is there (indicating throughout.)

[p.70]

As you saw from what I tried to present as being a roughly normal sort of picture, there is a definite decrease in activity in the medial parts of both

temporal lobes when you compare the medial with the lateral part. And it could, under ordinary circumstances, might be 10 to 20 percent less. This, however, is in the range of, perhaps, 50 percent. 50 percent less. This is the way that we look at things. We can actually go in there and look at the number itself. But as you saw with all the pictures to look at and so forth, that's ordinarily not what we do (indicating throughout).

Now, we do have an advantage in the clinical situation because you're sitting at the monitor and you have the computer under your control. And these pictures that you see here were taken as very standard and very adequate images. Sure, you could take all kind of weird whoppy-jawed orientations which wouldn't really show you what you wanted to display. And what I wanted to show here was a marked decrease in the medial temporal lobe which is the area where the amygdala lives and the hippocampus. Or exist (indicating throughout).

Q. Okay. Thank you, Doctor. Those areas that are involved in this decreased brain activity, do we know

[p.71]

what those areas are responsible for?

A. Yes. Yes.

Q. These are all part of the limbic system which is involved in motivation, involved in activity. The amygdala is right at the end of the limbic system. And its job is -- as is currently known or understood is to place meaning on -- and risk to events. Just as

when you hear a noise, there -- or hear a sound, there is a place in the brain that attaches meaning to that sound. The amygdala attaches a matter of risk to the -- to the events. And you also --

MS. FOULSTON: Your Honor. Excuse me, Doctor.

THE WITNESS: Yeah.

MS. FOULSTON: Objection as to the forensic evaluation and analysis.

THE COURT: I have found, I believe, that there is no foundation to qualify this witness to give an opinion as to what the abnormality might mean in the interpretation of or prediction of human behavior.

MR. GREENO:

Q. Doctor, we're not talking about prediction of human behavior; is that right?

A. That is correct.

Q. We're -- what I'm asking you about is do you know as a

* * *

[p.76] [*Cont. Cross-examination of David Preston, M.D. by Mr. Evans*]

A. Yes.

Q. Did you find that the scanner that generated the PET scan was a state-of-the-art device?

A. Yes.

Q. Technically speaking, did you find it to be a satisfactory study?

A. Yes.

Q. Did it generate a picture of Jonathan Carr's brain?

A. Yes.

Q. Let me hand you what I've marked as Defendant's Exhibit 2. It's actually JC-2, Dr. Preston. Is that the image of Jonathan's brain that that PET scan produced? I don't have that up there.

A. Oh, that's fine. Yes. This one.

Q. Okay.

A. Yes.

Q. And in looking at that PET scan, is this a diagnostic tool to diagnose brain abnormality?

A. Yes.

Q. Did you see brain abnormality in the PET scan that was generated of Jonathan Carr?

A. Yes.

Q. And is that reflected in JC No. 2?

A. Yes.

MR. EVANS: Move for admission of JC-2,

[p.77]

Judge.

MS. FOULSTON: Same objection as to relevancy.

MR. GREENO: No objection, Your Honor.

THE COURT: I'll admit it.

MR. EVANS:

Q. Dr. Preston, I'm about as technically challenged as they come, but let me see if I can work this thing.

(Off-the-record discussion.)

Q. Now, I've flashed up there -- is that the same picture that's depicted in JC-2?

A. Yes.

Q. If you could show the jury the abnormalities that you found in Jonathan's brain.

A. Well, after looking at all the various cuts that we -- that we've shown previously on Reginald, we can come down to these again temporally-oriented views. And again, we see this deficit in metabolism in the region of the hippocampus and in the region of the amygdala. And again, this is a question about this should reflect a deficit in metabolism in regions associated with short-term memory and with assigning risk to events.

MS. FOULSTON: Your Honor, again, objection to the --

[p.78]

A. Oh, okay.

THE COURT: Nonresponsive?

MS. FOULSTON: Nonresponsive and objection to the opinion given of a forensic nature.

THE COURT: I'll sustain as not responsive.

MR. EVANS:

Q. Dr. Preston, you found injury or damage, abnormality in the amygdala part of Jonathan's brain; is that right?

A. That is correct.

Q. And you also found injury, damage, abnormality in the hippocampus part of his brain; is that right?

A. That's correct.

Q. The hippocampus deals with short-term memory?

A. Yes.

Q. The amygdala also deals with things like that; is that true?

A. Memory, but assigning -- assigning risks to events, yeah.

MS. FOULSTON: Your Honor, I again object, nonresponsive.

THE COURT: I'll sustain.

MR. EVANS:

Q. The abnormality to this part of Jonathan's brain, you said that that's the amygdala and the hippocampus; is

[p.79]

that right?

A. Yes.

Q. That is the same thing that you found when you looked at Reginald's brain; is that right?

A. That is correct.

Q. Is there anything that could be made of that? I mean this is a hereditary thing or how would you explain that?

A. I would not think it's hereditary. I -- we did the study and that's what we found.

Q. Do you have a medical opinion on what would account for this brain abnormality? What would have caused it?

A. Typically, at least in the patients that I have seen, closed head injuries would be the first thing I would think about. In the textbooks, that's what it says also.

MS. FOULSTON: Excuse me, Your Honor. Object as not responsive as it would relate to Jonathan Carr.

THE COURT: I'll overrule the objection.

MR. EVANS:

Q. Closed head injury?

A. Yes.

Q. Explain to the jury what that means.

[p.80]

A. This is what might occur in playing football. A helmet-to-helmet blow, sometimes even lighter things than that, as opposed to a penetrating head wound, where you might have an ice pick or an ax or something of that sort that might penetrate the skull and get into the brain.

Q. It would be consistent with a blow to the head that would render someone unconscious?

A. Uh huh, yes, probably.

Q. Now, these parts of the brain, these regions of the brain that you find -- that you found to be abnormal, what do they control again?

A. Short-term memory and assigning (indicating) --

MS. FOULSTON: Your Honor, I'm going to --

THE WITNESS: Yeah.

MS. FOULSTON: Excuse me, Doctor.

THE WITNESS: Yeah.

Objection.

THE COURT: Overruled.

MR. EVANS:

Q. Short-term memory, and what were you about to say?

A. And assigning risk to events and situations (indicating).

MR. EVANS: That's all I have, Judge.

THE COURT: Thank you.

[p.81]

Cross-examination, Mrs. Foulston.

CROSS-EXAMINATION

MS. FOULSTON:

Q. I'm back again, Doctor. This is cross-examination. And we're going to be going over some of the issues of that which you've testified to.

A. Yeah.

Q. I think you can use the regular microphone there or if you feel comfortable, go ahead with the one that you have.

A. I feel more comfortable with this one. Thank you.

Q. All right. Thank you.

Doctor, you had testified in response to some questions by Mr. Evans, Jonathan Carr's attorney, that -- that the findings that you located were not hereditary; is that correct?

A. I cannot -- I have not heard that this has been reported as being a hereditary sort of thing.

Q. And you said that in looking at this type of a -- a slice of a PET scan as well that the decrease in function was not terribly uncommon, is that correct, those were your words?

A. Yes.

Q. And so you said that there are many people in this world that might have a decrease in function in their

[p.82]

temporal lobes; is that right?

A. That is correct.

Q. And you also, I believe, talked a little bit about the fact that when we are looking at a PET scan, we're looking for the metabilization of the glucose that's attached to an isotope so that we can see it --

A. Yes.

Q. -- is that right?

To see how the brain functions; is that correct?

A. Correct.

Q. And in doing so, and we'll go back to the normal one, the roughly normal scan that you talked about, in that particular instance, you were not aware of any metabolic problems that the suggested patient might have had, were you?

A. This patient had -- actually had a problem that might cause a decrease in the region of the hippocampus.

Q. But -- I'm sorry, Doctor, did you -- did you meet the person whose PET scan you used?

A No.

Q. Did you review all of his medical records?

A. I reviewed the report that had the medical record -- synopsis of the medical record attached to it.

Q. And I believe that you also generated a report in this

[p.83]

case that was given to counsel for each defendant, Jonathan and Reginald Carr; is that correct?

A. Yes.

Q. And as you've told us today, that this particular Exhibit A-40 was the somewhat normal? Roughly normal?

A. Yes.

Q. All right. And in your report, I believe, that you classified this as a normal young male?

A. Yes. This is an error.

Q. All right. And so this would be a 50-year-old or so; is that correct?

A. Yes.

Q. And one might expect changes in metabolism as we age; is that correct?

A. It decreases as we age.

Q. Right. So there are things that cause changes in our body and our bodily functions as we age?

A. Yes.

Q. And in these two particular individuals, Jonathan and Reginald Carr, you made the same findings; is that correct?

A. That is true.

Q. And if I were to show you two scans -- these two diagnostic slides that you used, they're pretty identical, aren't they?

[p.84]

A. They are very similar.

Q. All right. And in fact, if I looked at them, there's just a little difference in the way the color comes through on this one than it does on this one; is that correct?

A. Yes.

Q. And in Exhibit JC-2, that's a larger picture than in A-39?

A. Yes.

Q. And in these particular photographs, the same coloration is shown; is that right?

A. Yes.

Q. And so when you completed that, did you think you had two different people or just one people -- one person?

A. Well, I knew I had two people because they were done on different days.

Q. But other than that, if you saw these scans without the date information on them?

A. They are very similar.

Q. All right. So they almost could be taken from one person, then?

A. It's possible, I suppose.

Q. And you're saying heredity doesn't have anything to do with it that you know of?

A. That's true.

* * *

[p.141] [*Cont. Recross-examination of Amanda Carr by Ms. Parker*]

MS. PARKER: I don't have anything further.

THE COURT: Mr. Greeno.

MR. GREENO: Nothing further.

I would move to publish the items that we moved into evidence.

THE COURT: Mr. Evans, have you any questions of Mrs. Carr?

MR. EVANS: I don't have any questions.

THE COURT: Mrs. Carr, thank you very much, ma'am. You -- just -- yeah, step right out there, take a left and you will be back in the waiting room.

THE COURT: Publish your pictures, Mr. Greeno. And we'll -- we'll have our noon recess as soon as we finish that.

(Off-the-record discussion.)

THE COURT: Members of the jury, the admonitions still apply. We'll have our lunch now. 1:20, start again. Thank you.

(The noon recess was taken from 12:01 p.m. to 1:33 p.m., after which the following proceedings were had in the presence of the defendants.)

THE COURT: Thank you very much. Ms. Marquez, bring us the jury, please.

(The jury returned to the courtroom,

[p.142]

after which the following proceedings were had.)

THE COURT: Members of the jury, as you'll recall, we're in that part of the case where evidence is being presented for Mr. Reginald Carr. The lawyers have all agreed to take one or two witnesses out of turn. That will be for Mr. Jonathan Carr. That's the next witness.

Administer the oath, please, ma'am.

LEROY CULVER,

called as a witness herein on behalf of Defendant Jonathan Carr, having been first duly sworn, testified as follows:

THE COURT: And Mr. Ron Evans for Mr. Jonathan Carr.

DIRECT EXAMINATION

MR. EVANS:

Q. State your name for the record, please.

A. Leroy Culver.

Q. Mr. Culver, you're from Dodge City; is that right?

A. Yes, yes.

Q. How old are you?

A. 73.

Q. Have you lived in Dodge City a while?

A. Quite a while. 50 some years.

[p.143]

Q. You're married to a lady that's right outside named Juanita; is that right?

A. Right. Right.

Q. How long have you been married to her?

A. 53 years.

Q. Now, you know Jonathan Carr; is that right?

A. That's right.

Q. He did some work for you?

A. Yes.

Q. About how long did Jonathan work for you?

A. Approximately three to six months. And I am not sure of the exact time.

Q. What kind of business are you in? What kind of work were you doing?

A. I did light construction at that time.

Q. And Jonathan would help you in this light construction?

A. Yes.

Q. Do you recall how you came to hire Jonathan?

A. I needed some help and called the employment agency and they sent him out to me. And from then on he stayed with -- kept working for me.

Q. Was he a good worker?

A. Very good. Very good. Always on time. Of course, I normally picked him up, so that made it easier.

* * *

[p.198]

CERTIFICATE

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

I, Sandra J. Berger, a Certified Shorthand Reporter, and a regularly appointed, qualified, and acting Official Reporter of the 18th Judicial District of the State of Kansas, do hereby certify that as such Official Reporter, I was present at and reported in Stenotype shorthand the above and foregoing proceedings in **Case No. 00 CR 2978, *THE STATE OF KANSAS, Plaintiff, v. REGINALD D. CARR, Defendant,*** and

Case No. 00 CR 2979, *THE STATE OF KANSAS, Plaintiff, v. JONATHAN D. CARR, Defendant,* heard on the 6th day of November, 2002, before the Honorable Paul W. Clark, Judge of Division No. 9 of said Court.

I further certify that at the request of Debra J. Wilson and Rebecca E. Woodman, Capital Appellete Defenders, a transcript of my shorthand notes was typed by me or under my supervision via computer-aided transcription, and that the foregoing transcript Volume 42, consisting of 197 typewritten pages, is a true copy of all of the proceedings, all to the best of my knowledge and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Wichita, Kansas, this 21st day of March, 2003.

/s/Sandra J. Berger
SANDRA J. BERGER
CERTIFIED SHORTHAND REPORTER

SANDRA J. BERGER, CSR
Official Court Reporter

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CRIMINAL DEPARTMENT

Case No. 00 CR 2978
Case No. 00 CR 2979

[Dated November 7, 2002]

THE STATE OF KANSAS,

Plaintiff,

vs.

REGINALD D. CARR,

Defendant.

THE STATE OF KANSAS,

Plaintiff,

vs.

JONATHAN D. CARR,

Defendant.

JURY TRIAL
Volume 43-A

PROCEEDINGS had before the Honorable Paul W. Clark, Judge of Division 9 of the District Court of

Sedgwick County, Kansas, at Wichita, Sedgwick County, Kansas, on the **7th day of November, 2002.**

APPEARANCES

PLAINTIFF:
Ms. Nola Foulston
District Attorney
Ms. Kim Parker
Deputy District Attorney
Mr. Kevin O'Connor
Assistant District Attorney
Sedgwick County Courthouse Annex
535 North Main Street
Wichita, Kansas – 67203

DEFENDANT REGINALD D. CARR (Appearing in person):
Mr. Jay E. Greeno
Of Counsel, REALS & WEBER
Attorneys at Law
Suite 215
250 North Water
Wichita, Kansas – 67202
and
Mr. John V Wachtel
KLENDA, MITCHELL, AUSTERMAN & ZUERCHER, LLC
1600 Epic Center
301 North Main
Wichita, Kansas – 67202

DEFENDANT JONATHAN D. CARR (Appearing in person):
Mr. Ronald F Evans
Mr. Mark A. Manna

Attorneys At Law
Death Penalty Defense Unit
Suite 302
112 Southwest Sixth Street
Topeka, Kansas – 66603

SANDRA J. BERGER, CSR
Official Court Reporter

INDEX

Defendants' Witnesses	PAGE
JESSE HARRIS	
Direct Examination by Mr. Greeno	4
Cross-examination by Ms. Parker	11
THOMAS REIDY	
Direct Examination by Mr. Greeno	17
Voir Dire Examination by Mr. O'Connor	21
Continued Direct Examination by M. Greeno	28
Cross-examination by Mr. O'Connor	87
CERTIFICATE OF REPORTER	124

SANDRA J. BERGER, CSR
Official Court Reporter

* * *

[p.32] [*Cont. Direct Examination of Thomas Reidy by M. Greeno*]

ones or have negative experiences, it affects us as adults. The families are the strongest socializing force in life. That's a well-established fact. Children are also predisposed through heredity, so you have nature and nurture. The nature being the biological disposition you come into the word with and certainly nurture is what happens to you once you're here through your family which is the socializing force.

Q. Doctor, in regard to that particular issue, what kind of things do you look for in a history when you're talking about hereditary issues?

A. In hereditary issues, we're looking for any developmental deviation that you can go back and look in generations, problem histories, criminality. For example, there's some evidence that there may be some genetic link there. You're looking at any hereditary neurological difficulties, that sort of thing.

Q. Okay.

A. You're -- you're also looking at temperament. That's also a hereditary factor. The list goes on. Those are some of them. We know that deviance begins at home. Children are born, even though they may have some predispositions to act in certain ways, they really come into the world with almost a *tabula rasa,*

* * *

(p.34)

are -- and there's another slide corning up that will list a whole range of them. But what I'm talking about are issues such as mal- - child maltreatment, whether it's physical or sexual abuse. I'm talking about paternal abandonment. I'm talking about inadequate guidance and supervision. I'm talking about family criminality. We're talking about family mental illness. All of those factors can be developmental traumas and influence a growing person. And what happens is as these developmental traumas accumulate in a child's life, they get filtered through a protected -- a protective factors element.

Q. What are protective factors?

A. Protective factors are -- oh, such things as healthy -- one parent may be healthy, the other parent not, so the child may focus on the healthy parent. The healthy parent may protect the child from the unhealthy parent, for example. There may be nurturing teachers, nurturing individuals in the environment that can protect the child from some of these developmental traumas. And it's those response relationship, in other words, the more protective factors there are to balance the traumas, the less damage you have on outcome. The less the protective factors, the more likely you're going to have damage

* * *

[p.53]

alcohol and drugs. There was an instance of beating a teacher that his mother broke up in the ninth grade. The boys were shooting BB guns at each other when they couldn't find animals to shoot at. Jon shot Reginald in the head with a BB gun and I believe it's still there. So there was certainly a fair amount of early violent behavior in his life.

Q. We're talking about antisocial behavior and attitudes another risk factor.

A. Yes. He had his -- there was an arrest for a college robbery, although I understand that there was also something that happened earlier with a battery and some sexual solicitation as a teenager. Went on probation, he failed urine tests, tested positive for drugs. At the age of 11 he was holding drugs for dealers.

Q. Do you know where this was at? The age of 11, holding drugs for dealers?

A. I believe it was in Cleveland, but I am not certain.

MR. O'CONNOR: Judge, I'm going to object at this point for lack of foundation.

THE COURT: I'll sustain --

MR. GREENO:

Q. This information --

THE COURT: -- as to foundation on the last

[p.54]

question.

MR. GREENO:

Q. That information that you got regarding these risk factors, where did this information come from? Some of it come from Mr. Carr?

A. Some of it came from Mr. Carr, some of it -- and the rest of it came from the people that I interviewed. And some that your investigator interviewed.

Q. Okay. Family members and friends of the family that knew them?

A. Yes.

Q. Okay.

MR. O'CONNOR: Judge, I'm still going to object. I would appreciate names.

THE COURT: I'll sustain the objection.

MR. GREENO:

Q. Okay. Can you name -- do you have your notes there with you? -- some of the people that you talked to?

A. Yes.

Q. Okay.

A. Janice Harding, Temica Harding --

Q. Let's talk about the holding drugs for the dealers at age 11. Where did you get that information from?

A. I believe Hr. Carr told me that.

Q. Okay. What about the teen drug sales and the use by

[p.55]

the age of 13? Do you recall who told you that?

A. I believe he did as well.

Q. Okay. What about the early continuous promiscuity?

A. Well, you know, I talked with a whole bunch of people. It's kind of hard to keep straight who said what on various topics. In terms of early sexual exposure, the promiscuity was from Reginald, I'm sorry, Mr. Carr, but we also had information on early sexual exposure from his mother, from Temica, from his wife Mandy, from a paternal aunt. They also told me that.

Q. Okay. Let's talk about the irresponsibility -- or irresponsible parent for three children. Where do we get that information?

A. That came from Mr. Carr as well as the mothers -- the two mothers of his children.

Q. And you talked to his sister as well, didn't you?

A. Oh, his sister, yes.

Q. Okay.

A. I'm sorry.

Q. When we're talking about irresponsible parent for three children, you're talking about Mr. Carr; is that correct?

A. Yes.

Q. Okay. Disruptive nonviolent rule violations in the jail. Where did that information come from?

[p.56]

A. The records that you sent me of his incarcerations.

Q. Okay. And the parent models for drug use and behavior. Did you get the information on that from someone?

A. Yes. Got it from Mr. Carr, I got it from his mother, I got it from Temica, and I got it from his paternal aunt.

Q. Let's talk about what you got from his mother. Now, she's already testified in this particular case, she's indicated to us that she drank and that she smoked marijuana. Is that basically the same information that you got from her?

A. Yes, but she also told me she used cocaine.

Q. Okay. And then the gang affiliation at age 13, where did you get that information?

A. From Mr. Carr. But he had told this to his wife as well.

Q. Okay. Do you want to go to the next slide?

A. This one here?

Q. No. Yeah, there we go. Drug sales, early sex, sensation seeking. Now, you already indicated that the two issues we talked about, holding drugs for drug dealers by age 11 and drug use by -- sales by

age 13, you got that from Mr. Carr, is that correct, that information?

[p.57]

A. Yes.

Q. What about the selling drugs with cousin?

A. As I recall, it was certainly from Mr. Carr.

Q. Alcohol abuse, heavy by the age of 16, where did you get that information?

A. From Mr. Carr and I believe one of his aunts.

Q. Okay. Mixed drink and marijuana with alcohol, where did you get that information at?

A. That I believe came from Mr. Carr.

Q. Okay. The age 6, touching girls at home.

A. That came from Mr. Carr and some other of the family members.

Q. Can we talk a little bit more about that? What was that all about?

A. There were reports that -- and what he told me is that mother would have children in the house that she was baby-sitting for and that he would engage in some sex play with them.

Q. Okay. Starting at age 7, frequent sexual activity with female cousin, where did you get that information?

A. That came from Mr. Carr and it came from the cousin.

Q. Okay. Can you tell us a little bit more about that? If you know.

A. My recollection without looking at the notes is that

[p.58]

there were frequent periods of sexual activity that went on over a period of years --

Q. Okay.

A. -- with that cousin.

Q. The sex with upstairs neighbor. Where did you get that information?

A. Again, from Mr. Carr and others who had heard about that.

Q. Okay. Promiscuous sex activity?

A. Mr. Carr, I think.

Q. Okay.

A. And certainly his wife as well told me about that.

Q. Okay. And arrest and delinquent gang peers.

A. Oh, the arrests we know about. And he talked about his gang affiliation. He would write letters to his wife and knock out the "C" for Crips in the letters which meant he was a Blood. And so there were other delinquent behaviors. He was stealing money, he took some money from the grandmother in one instance and there are episodes of shoplifting.

Q. Okay. What do all these factors have to do with your assessment here?

A. Well, these all essentially go back to the Justice Department Model of Risk for Future Acting Out Violent Behavior. And to the extent that these are present,

[p.59]

it fits that category and certainly would raise the risk. It doesn't necessarily say a particular person is going to act in a way. It doesn't say that they're necessarily going to be violent. It doesn't necessarily say they're going to shoot anyone. It simply says that this raises the risk of negative behavior and criminal conduct.

Q. Are there implications for the early alcohol and drug abuse in life?

A. Well, we know early life alcohol and drug use disrupts the development of maturity, it impairs judgment, it increases interaction with delinquent peers that are doing the same kind of things, it increases the risk of deviant behavior, increases the risk of violence. When you look at other government statistics about the risk of deviant behavior and delinquent peers, you find high rates of -- of substance abuse before and during crimes. So it's a major risk factor.

Q. Now we're talking about corruptive family influences. We got -- you checkmarked father abandoned the family. Where do we get that information?

A. Just about everybody in the family.

Q. Okay. Is there any specific effect that that --

A. Well, father abandonment is a -- is a -- or actually any -- any parent abandonment is a major, major risk

[p.60]

factor across every study and textbook you ever want to read, that it leaves a significant void in a child's life. And in this instance, Mr. Carr had really strong, positive feelings about his father. And various family members, including Mr. Carr, had mentioned this positive affection for his father, despite whatever foibles the man may have had. And when the man left, there was a great deal of rejection. And he continued to reject any overtures that Mr. Carr made to him and that -- so it was quite a blow to him to have this father abandonment.

Q. The next issue is the mother/father drug and alcohol abuse. I think we've already talked about you got some of that information from his mother?

A. Right. And other family members as well. There's some allegation that mother obtained drugs from Reginald.

Q. Now, let's talk about that for a second. Where did you get that information?

A. I believe I got that -- some of that from Reginald.

Q. Okay. And his mother wouldn't admit to that. Okay? Is that unusual?

A. No, not at all. As a matter of fact, when you take histories from family members involved in serious situations, or actually not even involved in these

[p.61]

kind, you'll get different histories. You'll get omissions. You'll get distortions. And it's through discussions with other family members you start to piece together things that may have happened in the family. So it's not uncommon.

Q. Okay.

THE COURT: Mr. Greeno, is this a good place to stop your direct examination for a morning recess?

MR. GREENO: Sure.

THE COURT: That's what we will do, members of the jury. We'll have our morning recess at this time. Thank you for your attention. We'll come and get you in about 15 minutes.

(A recess was taken from 10:17 a.m. to 10:42 a.m., after which the following proceedings were had in the presence of the defendants.)

THE COURT: Thank you very much.

Ms. Marquez, bring the jury, please.

(The jury returned to the courtroom, after which the following proceedings were had in the presence of the defendants.)

THE COURT: Members of the jury, continuing on now.

[p.62]

Mr. Greeno, did you want that -- did you want that light dimmed again?

MR. GREENO: Oh, yes, I do, Judge.

MR. GREENO:

Q. Dr. Reidy, we're talking about these corruptive -- well, corruptive factors in general. Is there any kind of a criteria used in the psychological field where you have to have a certain number of these in order to make an assessment or is it --

A. No, there's no critical number you ever cut off, if you will. It's simply the more factors you have that influence development, the greater the probabilities are that you'll have some negative outcome. I don't think the science has evolved to the degree where you can actually count numbers. It doesn't work like that.

Q. And some of the bases for these factors that we're talking about you've already mentioned come from some studies that were done by the United States Department of Justice, correct?

A. Yes.

Q. Did some of them come from the United States Surgeon General's Office?

A. Yes.

Q. And the FBI?

[p.63]

A. Yes.

Q. Okay. And you referred to some of those during the course of your preparation for this testimony?

A. Yes.

Q. Okay. And I think we left off, we were talking about maternal uncle's drug dealers and that was some information -- where did you get that information from, do you recall?

A. I got that from -- some of it from Reginald, as I believe -- Mr. Carr, I believe.

Q. Okay. Did his mother indicate she had a brother that was -- had gotten in trouble for that?

A. Yes.

Q. Okay. This Reginald drink with an uncle at age 11, where did that information come from?

A. I got that from Mr. Carr and I believe that some other family members had mentioned that things like that had occurred.

Q. Okay. What kind of corruptive factor is that?

A. Well, it's certainly very poor role modeling. It's part of that multigenerational impact of family problems that it's not just one parent, it's a whole group of family members. It certainly leads to very antisocial attitudes and other corruptive behavior that goes along with the drinking and so on.

[p.64]

Q. Okay. The -- you got the cousin gang member and drug dealer, where did you get that information from?

A. That was from Mr. Carr.

Q. Was that the same cousin that was killed in Cleveland, Ohio --

A. Yes.

Q. -- shot in the head?

A. Yes.

Q. Father molested daughter and cousin, where did that information come from?

A. That came from Temica and some other family members.

Q. Okay. Now, here -- I understand that this -- that certainly would be damagibg to the daughter and the cousin. How does that impact Reginald?

A. Well, to the extent when he learned about it, it's unclear. But to the extent that it was going on in the family, it was part of that whole early sexual exposure that he was having. And it talks about the -- the atmosphere in the family that was conducive to that kind of behavior.

Q. Okay. Allegations of molestation by the mother and her boyfriend. Now, we got this one -- this is allegations; is that correct?

A. Yes.

Q. Okay. Did you attempt to try to verify any of that?

[p.65]

A. Yes, I did. And I got various opinions from different individuals as to what went on or didn't go on. So I don't know whether it's true or not.

Q. Is that unusual when you do an investigation like this?

A. No, not at all. When you have a history of really family turmoil, family problems, it's not uncommon for individuals to deny certain behaviors, where others will acknowledge certain things.

Q. The same thing with the allegations of sexual sister thing?

A. Yes.

Q. That was -- you weren't able to verify that at all?

A. No.

Q. Okay. Discovery of pornographic photos of mother with stepfather.

A. Yes, this occurred when he was about 13. And fairly graphic photos. And he kept them all these years hidden away and these were just recently discovered. So I don't know what the meaning of them was, but certainly finding that kind of material with your mother is something that would be pretty traumatic. And if you view it within the context of the rest of these factors that we've talked about as well as the others on other slides, you can see that that is also

[p.66]

a corruptive influence and affects the atmosphere in the home.

Q. You've got four uncles. He had some with criminal records, some with histories of substance abuse.

A. Yes, and mental illness as well. I forgot to put that in there.

Q. Okay. I think you have it on the next one. Mentally ill uncle --

A. Oh, I'm sorry, I do. Yes, there's mentally ill uncle and grandmother. Again, it just talks to the genetic vulnerabilities in the family. It doesn't necessarily mean in and of itself mean he is going to be ill, but rather we have a whole family system that has been damaged in a variety of ways.

Q. The next one talks about disturbed parenting and family management, low parent involvement, poor family role models. The first one you've got here is generally poor parent role models and rejecting. What do you mean by that?

A. Well, in general what I came to understand from talking to the various family members, as well as Mr. Carr, that these parents were not emotionally and physically available in a consistent manner to the children and certainly not after the parental divorce, when -- and even before it, when there is some

[p.67]

domestic violence going on in the home, there was drinking, drug abuse, there was the paternal rejection afterwards. There was the mother emotionally abandoning the children, not being around for them regularly, taking off for days, weeks, months at a time. The children were kind of left to their own devises. They were shipped to various relatives at different times. Mother had some boyfriends to the house allegedly. There were allegations of unfaithfulness on both sides. There were allegations of sexual abuse by the mother and her boyfriends of the children. Sexual abuse of the sister and a cousin by the father which we've mentioned.

Q. Doctor, some of these are repeated, are those because they are also included in the U.S. Department of Justice model that you're talking about?

A. Yes, this is -- this is one of the headings from the Justice Department model. And some overlap, of course, to a certain degree.

The parents fail to participate in activities, sporting events. There was certainly a great deal of emotional abuse. There was physical abuse, whippings with belts that left marks. Children were made to strip naked for the -- for the whippings. The mother stayed in her room more often than not,

[p.68]

ignoring the kids, felt comfortable there.

Q. Is that kind of an isolation issue?

A. It's very much an isolation issue. It's hard to be a good parent when you're not present. Whether you're physically in another room or somewhere else in the county or the state, the point is you're not physically present for your children. And the more that you isolate yourself from your child, the less likely they're going to feel a strong sense of bonding, attachment, a feeling of love, being cared for. And I think we all know from -- not just the scientific literature, but just common sense that that kind of thing is important.

Q. Well, could you substitute that, you know, with a -- provide a television in each room and a stereo and a VCR so they can be entertained?

A. Well, that may be very nice --

MR. O'CONNOR: Judge, I'm going to object, lack of foundation for the answer, at least at this point.

THE COURT: I'll overrule.

MR. GREENO:

Q. You can go ahead.

A. That would go to that whole isolation thing. That you can give children things, but what they really need is

[p.69]

you as a parent figure, as a role model, as someone to interact with, someone to provide nurturing, loving attention, and the kind of hugging that we give our kids. And when that's absent, they can

have all the goodies that they want but there's going to be something missing in their lives.

Q. When you mentioned the incident with the stepfather putting the gun to the mother's head -- we've heard discussion about that already.

A. Yes, that can be a very traumatic event. The kind of thing that children remember for years and years. It's an instance of violence. And it certainly is part of that whole corruptive family influence and disturbed parenting for parent role models. And then mother abrogated responsibility for care and feeding of the children. Very often the children were left to their own devises to fix food for themselves.

Q. And that was confirmed with Temica, his sister; is that correct?

A. Yes. And as I said, the mother would leave for days or weeks at a time. Depending on which relative you talked to, it was either because of domestic violence, drug abuse, just to get away. Where she went, what she did, I don't know.

Q. When we talked about disturbed parental behavior and

[p.70]

how that affects these developmental pathways, first of all, with the mother, there were issues specific to the mother -- to Mr. Carr's mother in this particular case?

A. Yes, if we take some of those issues -- some of these are a little bit of an overlap from what I -- on the previous side, but nevertheless they are important

because it is disturbed parental behavior on the mother's part. There was use of electric cords, belts on the kids. They were made to strip first, another one of the others was told to hold the legs down. The kids could choose which belt, "Daddy Heat" or "Hot Rod." They named the belts. The abusive discipline left marks and welts. Temica mentioned a scar on her leg from an electric cord.

The mother was increasingly unattached, unavailable, in her room constantly. She was also gone from the home regularly. There was drug and alcohol use going on excessively. There were allegations of sexual abuse which we've discussed. Mother displayed minimal to no affection. Both Mr. Carr and his sister talked about the -- the fact that -- I think there was only one instance where they were told that they were loved. There was very little of that from their perspective. There was a

[p.71]

lack of supervision of the children. It's hard to supervise if you're using drugs, alcohol, you're gone for days or weeks at a time or you're locked up in your room.

Q. You've got a quote down there from --

A. Oh, this is from the paternal aunt. She described the home as a terrible place for kids to grow up. The kids didn't have a chance. I'm sorry for the spelling. Mother's not a mother. Father's not a father. That was a direct quote from her. And she had some very negative things to say about both parents and the atmosphere in the home that was not very developmentally sound. There was domestic

violence observed with the mother and stepfather. And also I believe with the father as well.

Q. I think on the next line you talked about how this -- this relationship with the mother is considered in the literature.

A. Well, yes. As I said, children, as we know, growing up, those are your formative years. Your life course and pathways are determined. And children are much more vulnerable than adults to changes in their environment. They need stability, they need sameness. Kids need to take naps at the same time, for example. They need to know that a parent's going to be home for

[p.72]

them. When you never know what's going to happen from one minute to the next, it's hard to behave in a way that's consistent, it's hard to internalize standards because the standards change or there are no standards. And the normal child development depends on a stable relationship with a caring adult.

And a secure attachment to a parent figure is fundamentally important to healthy psychological development. And as I said earlier in this presentation, this is probably the single most talked about tenant that you'll find in the scientific literature.

Traumatic disruptions in the parent/child relation can cause immediate emotional distress, bewilderment, as well as lasting psychological harm. Disruptions here can be anything from

abusive behavior, absences, abandonment, lack of affection, lack of caring. All of those things can be traumatic to children and cause lasting harm.

The adverse impacts of disruptions and emotional bonding of a child with a parent, damage to one's identity, lowered esteem, various and sundry psychological disorders, anxiety disorders, depression particularly. Academic deficits, impaired capacity to trust and care for others. Deficient identification

[p.73]

with social ideals. One -- in this kind of environment, one tends to become more morally corrupt and then various kinds of problematic delinquent, violent behavior can occur.

Q. What do you mean by damage to identity?

A. Who you are as a person. What your values are. And it's your values that help you determine how you're going to behave in society.

Q. Okay. Did you examine factors in his life regarding the relationship or the behavior of his father?

A. Yes. What I was able to piece together here was that there was indeed sexual abuse of his daughter and another female cousin. Absent or rejecting of children, especially post-divorce. There was minimal contact with the children over years. Virtually none. Efforts -- there was one instance in which Mr. Carr was supposed to go to visit his father for a summer and at the last minute before they went he said he didn't want him to come. And

so that on top of the other rejection when he left just simply compounds the problems in abandonment.

There were -- there was abuse of substances, alcohol, over-the-counter medications such as Robitussin. There were rage attacks. He acted crazy at times according to one of the relatives.

[p.74]

Q. That was Dr. Harding, was it?

A. That was Dr. Harding, as I recall, said that to me.

Displayed minimal to no affection. Failed to pay child support, which certainly does not help the financial situation and hence contributes to more disruptive behavior in the home. There was domestic violence. Reginald observed his father chasing his mother down the street with a brick. The family was watching a movie, father was drinking Robitussin, started hallucinating and frightened the children.

So all of these type of behaviors certainly contribute to not only disturbed parenting, but a corruptive family home environment which if you take in the context of the other parent being equally as disturbed in her parenting, we start to see that there aren't that many protective factors here that are operating, at least in the home environment.

Q. I think we -- is that the next one or did we skip one?

A. Did we skip one?

Q. Yeah, there we go. Risks associated with father absent. These are some stuff from the literature; is that correct?

A. These are some -- these are some comments and summaries from the literature. And it's just to give you a general idea of what happens when fathers are

[p.75]

not present. There's low supervision of adolescents are frequently found in father absent homes, that's more the cause of delinquency than poverty. Sexual homicide, 47 percent of sexual homicide perpetrators experience father absence by age 12.

Q. Where did that information come from?

A. That came from a textbook that was published by two of the FBI agents involved in that kind of work. And it was the result of, I think, interviews with 31 sexual homicide offenders.

Q. I think you got in here 36 somewhere now.

A. Oh, is it 36? I'm sorry. So much data to keep in mind.

Q. Go ahead.

A. They're more likely to commit school crimes. The likelihood that a young male will engage in criminal activity doubles if he's raised without a father and triples if he lives in a neighborhood with a high concentration of single-parent families. 70 percent of juveniles in state reform institutions grew up in single or no parent situations. 72 percent of

adolescent murderers grow up without fathers. Fatherless children are dramatically at greater risk of drug and alcohol abuse, mental illness, suicide, poor educational performance, teen pregnancy and

* * *

[p.80]

behavior disturbances in males. It's usually more the acting out variety, but you can get socially withdrawn behavior. So -- but these are more the sexual ramifications.

Q. We talked about failure and lack of school attachment.

A. As far as I understand, he attended eight different schools, elementary school, and then one high school, but dropped out at the ninth grade before he was going to get thrown out because he had been beating up students. He felt the teachers disliked him. Depending on who you believe, he had poor grades or he was a brilliant student. But nevertheless, he apparently repeated the third grade, as best he can recall. The school records were not available to us to review. They've been destroyed, except for the -- I guess the ninth grade record which we have. We do know he was suspended in the eighth grade for sexually harassing a teacher. Eighth and ninth grades he was stoned daily going to school and during school. Excess absences in the eighth grade. There were 32 of them in the ninth grade. There were 21 detentions and suspensions. There were frequent fights.

So all of that early aggression behavior that we talked about earlier was seen through the school years and there was certainly not a strong

[p.81]

attachment to school by virtue of having so many different ones and adjustment difficulties.

Q. We talked about corruptive community factors. These are some things that Mr. Carr reported to you?

A. Yes, these were reported by Mr. Carr. Some of the family members observed frequent fights. He certainly engaged in fights at school, in the community. He was running drugs for dealers and then selling himself by about age 13. Delinquent gang -- he was hanging out with delinquents, gangs, from -- by the age of 13. He certainly had easy availability from -- to drugs and alcohol at a very early age.

Q. Dr. Reidy, let me ask you, when you interviewed Mr. Carr and you were trying to get this information, was this stuff that he volunteered to you?

A. No, this was not easily gotten. It was pulling teeth to get information from Mr. Carr and from many of his relatives. If you didn't ask the right question, you didn't get an answer. You didn't -- so it was not like I was getting a narrative of this information. It was a very tedious process and details were hard to come by at times.

Q. Okay. The next slide talks about stunted moral development.

A. As a result of the risk factors and the corruptive

[p.82]

influences and the pathways toward delinquency, crime and violence that we've talked about, you can't help but understand that there's a stunted moral development that occurred with Mr. Carr as he went along. There's evidence of inadequate self-control, there's a reduced regard for self or others. Reduced community identification, perception of others as hostile. Distorted view of maleness and sexuality. Deficient moral reasoning, desensitization to violence. And aggression viewed more as normal and appropriate. When you are raised in an environment that's aggressive and you're engaging it in for years and years at a very early age it becomes a way of life. And so it certainly does not bode well for a positive life outcome.

Q. The next one, this is the model of risk for sexual homicide. This comes from the book that was written by the FBI investigators; is that correct?

A. Yes, two of them were FBI investigators. And they developed a model for risk for sexual homicides after interviewing these 36 individuals. And their model talked about sexual and physical trauma, direct and indirect, played a role in the homicides.

Q. What's that mean?

A. Either they were directly abused physically or

[p.83]

sexually or they saw others abused in the family. There was a developmental failure and attachment disturbance. They didn't connect with a parent figure and family members. And there was an interpersonal failure of caretakers as role models. The parents just simply weren't parents. And if you think back to -- to what his paternal aunt, Demetris White, said, that these parents certainly fulfilled this criteria, that they just weren't there for them. And I think you can see from what I've presented that all of these areas certainly were disturbed formative events and fit into this model.

Q. Did they come up with a list of sexual homicide risk factors?

A. Yes, they looked at the risk factors in sexual homicide cases that they looked at and they saw family history of problems, family alcohol history, 69 percent of those experienced that. Family history of drug abuse, 33 percent. Psychiatric history, 53 percent. Current family criminal history, 50 percent. Family sexual problems, 46 percent.

They looked at the history of child maltreatment with abuse and neglect. They found physical abuse history was present in 42 percent of the cases. Psychological abuse was present in 74

[p.84]

percent of the cases.

They looked at -- they also determined that the relationship with parents and siblings was critical.

They found instability of residence was present with 68 percent of the cases. Father leaving before age 12 in 47 percent. Mother was the dominant parent in 66 percent of the cases. Negative relationship with male caretakers, 72 percent of the cases. Negative relationship with the mother in 44 percent. Perceive they're being treated unfairly in 53 percent. No older sibling role model in 44 percent of the cases.

So these individuals -- these experienced homicide investigators came to very much the same conclusions that the Justice Department did in looking at risk factors and putting together the influence of these risk factors, both the family and community and peers and so on, and determined that sexual homicides, that certainly these risk factors were present to cert- -- to varying degrees.

I think it's important to point out, as was mentioned in one of the questions to me, not everybody has every characteristic and factor. That's just simply not going to occur. But what you have to look at is the overall pattern of individuals that have

[p.85]

multiple risk factors well above the average and well above the base rates of what you would expect. And so that's what's important to keep in mind.

Q. So how do all these things affect Mr. Carr? What does it show us about his pathways?

A. Well, if we take that first slide that we looked at earlier when I was talking about developmental traumas and the protective factors that either go to

less damage or more damage, from what we've been able to piece together in Mr. Carr's life, the developmental traumas were severe, the risk -- or the protective factors were minimal to nonexistent. And the developmental traumas led into the area of more damaged outcome than might be the case had there been more protective factors available to him.

Q. Now, these developmental traumas and this damage that you're talking about, is it only psychological damage?

A. No.

Q. What kind of damage can happen as a result of these kind of -- this kind of trauma?

A. Well, you can certainly have physical damage. You can have strong emotional damage, psychological damage.

Q. Do these developmental traumas, depending on when they occurred and how they occurred, sometimes affect the development of the brain?

[p.86]

A. They can, yes.

Q. Now, then, we've talked about this briefly, early on, and I want to ask you about it in more detail. Now, we're looking at this information for a reason, to kind of figure out what's going on with Mr. Carr; is that correct?

A. Yes.

Q. Does it in any way absolve him of his responsibility for his actions?

A. Absolutely not.

Q. Does he know what he's doing when he does things?

A. Yes.

Q. Does he know what he's doing is wrong?

A. Absolutely.

Q. Then how does it affect him?

A. It simply raises the risk -- the choices that we make in life are limited to a great degree by the past experiences that we've had. And people make choices in life, but those choices are influenced by a lot of these developmental factors. And when your choices are limited, you go along a negative pathway. And then situational factors come into play and the situational factors then interact with the damaged individual and then you have violence, crime, so on.

Q. Okay. Does this mean that he's going to continue to

[p.87]

have these problems in the future or are there going to be factors that would affect his behavior that can intervene now? For instance, structure, would that --

A. Structure, sure, to the extent that it -- that it prevents any further violence and some guidance as to what you do every day, how you do it, where there's no room for judgment, yes.

MR. GREENO: Okay. Thank you very much, Doctor. I don't have any further questions.

THE COURT: Mr. Evans.

MR. EVANS: I have none, Judge.

THE COURT: Cross-examination.

MR. O'CONNOR: Yes. Thank you, Your Honor.

THE COURT: Mr. O'Connor.

THE WITNESS: May I turn this off or do you want to refer to --

MR. O'CONNOR: Sure. Sure.

CROSS-EXAMINATION

MR. O'CONNOR:

Q. Okay.

A. Yes.

Q. Sir, one of the things I heard you say in talking to Mr. Greeno in regards to one of these risk factors is that you didn't know if it was true or not. I think it had to do with some kind of sexual abuse or

[p.88]

molestation of mother with daughter or brother or something like that. Do you remember saying that --

A. Yes.

Q. -- don't know if it's true?

A. Yes.

Q. And in fact, most of what you learned about Reggie Carr, you don't know if it's true or not because it's based upon self-reporting and statements of people; am I correct?

A. Well, other than my observing it myself, I'm not sure how else I would know that is was true. Or -- so I mean, yeah.

Q. Yeah. So you don't know if the information that's being provided to you is even true; is that correct?

A. Well, some of it came from several different individuals telling me the same kinds of things. So I would expect that certainly a portion of it is true.

Q. Now -- and this is from several different people related to Reggie Carr, within the last few weeks is when you spoke with them; is that correct?

A. Yes.

Q. And just like at the end of October, I believe you spoke with Mr. Carr and sometime in September; is that correct?

A. Yes.

[p.89]

Q. And this information that's being provided to you, what -- it's important to you that it -- you would hope that it would be true, is that correct, in reaching the conclusions or opinions that you've expressed?

A. Well, I wouldn't hope it's true, but I would like it to be true in terms of the developmental risk factors that have occurred. It -- there's certainly enough of

them that I found in talking to the different family members. It wasn't just an isolated event here and there. There were numerous -- numerous developmental issues, traumas raised by one family member or another.

Q. Now, the father of Reginald Carr, I think it's fair to say in the testimony that has come out and the information that has been told to you has been characterized as a pretty bad person; would that be fair?

A. Yes.

Q. And this father, were you provided with the telephone number to talk to Reginald Carr's father?

A. I don't remember if I had the number. I was told that when the defense team went to talk to him, he wouldn't talk to them.

Q. Detective Craig, I don't know if he's in the courtroom

[p.90]

here now -- no, he's not. But he spoke with him yesterday, last night.

A. Uh-huh.

Q. Would it surprise you that he denies ever sexually molesting his daughter?

A. No.

Q. And you wouldn't know it to be true or not, you're not saying that Mr. Reginald Carr, Senior, is not telling the truth?

A. I can only tell you what his daughter told me.

Q. Okay. And --

A. It's not uncommon, by the way, when molest occurs for a perpetrator to deny it.

Q. And it also could be true that it never happened at all?

A. I don't know that. All I can tell you is what information I was given by the victim.

Q. And it's very easy to cast stones at somebody that isn't here, wouldn't that be fair? Who doesn't have -- that hasn't come forward; is that correct?

A. Well, I'm not -- I'm just trying to present information that is available that explains the behavior.

Q. I'm not suggest- --

A. I'm not here to cast stones. I'm simply here to try

[p.91]

to explain how Mr. Carr got to be where he is.

Q. And I'm not saying you're casting stones. I'm saying the other people telling you that these things happened, it may not be true at all?

A. Yeah, I have no way to know what's true from many of them where there's one report. Where we have multiple reports, that raises the probability that these events did occur.

Q. Now, Reginald Carr, Senior, are you aware of the fact that Mr. Carr, Senior, Reginald Carr's father, has no criminal record whatsoever?

A. I didn't know one way or another about his record.

Q. He has a full-time job.

A. I don't know that.

Q. And he takes care of the family that he's with now. His wife and his children. You don't know that?

A. I don't know.

Q. Okay. Because you -- you weren't provided with a telephone number to talk with him. I mean it is important to determine whether or not it's true. At least talk to the people that allegations are being made against, wouldn't it?

A. Well, the -- the allegations are -- if they are denied, that's not going to be helpful at all. We have one person saying one thing, we have somebody

[p.92]

else saying something else. You know, I can only take the information that's available and indicate that this is what I've been told.

Q. Well, you know, evidence is introduced in this case, came in in the guilt phase and it's presented and if it's a piece of evidence there's a chain of custody for it. The defense lawyers can get up and say where did that come from, what does it mean, challenge the evidence. In this particular case, Mr. Carr, Senior's, denying much of the information that has been provided to you. So it may -- what I'm--

A. So did his mother.

Q. And it may be true, that it didn't happen; is that correct?

A. It could be. I don't know.

Q. There was one incident -- did you look through the Community Corrections records on Reginald Carr? You say you looked at his criminal record, did you look at the prison records?

A. I looked at prison records and jail records. I'm not sure what was included, if there was something else in there.

Q. Well, in the Community Corrections record, it indicates that the time you talked about where at the last minute Reginald Carr, Senior, didn't want his son

[p.93]

to come out and live with him --

A. Right.

Q. -- indicated in the records there that it was because there was an earthquake in California and his home was damaged and he had nowhere to put Reginald Carr. I mean --

A. I didn't --

Q. -- that could be true too?

A. I didn't see that.

Q. And so that could be the truth too?

A. That could be. It was perceived as rejection.

Q. And that's information that you received from Reginald Carr, that he perceived it as rejection?

A. Yes. The -- the absence of contact over the years has also been perceived as rejection.

Q. Now, a lot of the work that you do, you see people who -- you know, I don't know how to use -- other than saying pretty messed up people, kids?

A. Yes.

Q. Sexually abused?

A. Yes.

Q. Physically abused?

A. Yes.

Q. Horrible sexual abuse, horrible physical abuse?

A. Yes.

[p.94]

Q. Horrible childhoods. Don't have a father, don't have a mother?

A. Yes.

Q. Don't have a house?

A. Yes.

Q. Okay. Parents are strung out on drugs. You see those types of things; is that correct?

A. Yes.

Q. So it's fair to say that you have come across in your experience people who have experienced a far worst childhood than what you've heard that Reginald Carr experienced?

A. I don't know how to -- far worse, I've certainly seen equally ,as bad until you want to define worse. But --

Q. I mean, come on, Doctor, worse would be being beaten every day, being sexually abused by the father. I mean you've seen far worse than what has been told to you about Reginald Carr; is that correct?

A. You know, I just kind of answered that the way -- I mean, what's worse? Are we talking percentages? We talking -- if you look at risk factors, if you try to add them up, how many did Reginald Carr have? How many did some mythical person that I saw in the past -- not mythical, but some person I saw in the past have? I can't answer that question that way.

* * *

[p.104]

that?

A. I don't recall the details but I'm sure you can enlighten me.

Q. And he -- well, I'll try. He threatened the people who were pursuing him, telling him again that he would shoot them, he had a gun.

A. Okay.

Q. And he eventually struck, hit the people who tried to put him under arrest.

A. (Nods head.)

Q. Right?

A. Okay.

Q. And that he did not take responsibility for the crime even back then. He was found guilty, I believe, of aggravated assault.

A. Yes.

Q. And then he was put on Community Corrections, correct?

A. As I recall, yes.

Q. Well, what Reggie Carr then told you would be entirely incorrect --

A. Yes.

Q. -- about that incident?

A. Yes.

Q. And you say it doesn't surprise you, right?

A. Yes.

[p.105]

Q. So what he told you about everything else in his life could be entirely incorrect and false?

A. Well, what he may -- it's certainly possible that what he -- some of what he told me may be inaccurate, yes. Whether every statement he made

to me was false, you know, I doubt that. You know, certainly talking to the other family members to a certain extent verified many of his statements. Some I couldn't verify.

Q. And so I'll ask you again, everything that he could have told you could be absolutely and totally false and incorrect?

A. Like I --

Q. Could be? I mean I'm saying it could be.

A. Hypothetically it could be, sure.

Q. Now, when he was in Community Corrections, he had some structure then, didn't he?

A. I don't know how your Community Corrections operates out here, but there would be some supervision. What that was, I don't know.

Q. And you did not review, I believe you told us, those records of Community -- Santa Fe Community Corrections, does that ring a bell for you?

A. I'm sorry, I don't remember. There were two huge volumes of records I saw, I just don't remember.

Q. I have them right here too on the desk. And it

[p.106]

indicates that he was under pretty strict supervision. And they were trying to get Reggie to go to school.

A. Uh-huh.

Q. And trying to get Reggie to maintain a job.

A. Uh-huh.

Q. Am I correct?

A. Yes.

Q. And that would be something that you would do on Community Corrections?

A. Yes.

Q. And in fact, Reginald Carr did -- there are reports that he did very well in school. He was a good student.

A. Well, there were reports of that, yes.

Q. And there -- and those could very well be true, too; is that correct?

A. They could be. But we haven't been able to look at the records.

Q. Well, there -- there's a -- he was made to go to take a GED.

A. Yes.

Q. And did you have those records about the GED?

A. I know he got one. I haven't seen any other records.

Q. In fact, he got one very quickly; isn't that correct?

A. Yes.

* * *

[p.124]

CERTIFICATE

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

I, Sandra J. Berger, a Certified Shorthand Reporter, and a regularly appointed, qualified, and acting Official Reporter of the 18th Judicial District of the State of Kansas, do hereby certify that as such Official Reporter, I was present at and reported in Stenotype shorthand the above and foregoing proceedings in **Case No. 00 CR 2978, *THE STATE OF KANSAS, Plaintiff, v. REGINALD D. CARR, Defendant,*** and **Case No. 00 CR 2979, *THE STATE OF KANSAS, Plaintiff, v. JONATHAN D. CARR, Defendant,*** heard on the 7th day of November, 2002, before the Honorable Paul W. Clark, Judge of Division No. 9 of said Court.

I further certify that at the request of Debra J. Wilson and Rebecca E. Woodman, Capital Appellete Defenders, a transcript of my shorthand notes was typed by me or under my supervision via computer-aided transcription, and that the foregoing transcript Volume 43-A, consisting of 123 typewritten pages, is a true copy of all of the proceedings, all to the best of my knowledge and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Wichita, Kansas, this 21st day of March, 2003.

/s/Sandra J. Berger
SANDRA J. BERGER
CERTIFIED SHORTHAND REPORTER

SANDRA J. BERGER, CSR
Official Court Reporter

Nos. 14-449, 14-450

In the Supreme Court of the United States

KANSAS,

Petitioner,

v.

JONATHAN D. CARR,

Respondent.

KANSAS,

Petitioner,

v.

REGINALD DEXTER CARR, JR.,

Respondent.

On Writs of Certiorari to the Supreme Court of Kansas

JOINT APPENDIX VOL. 2

DEREK SCHMIDT
Attorney General of Kansas
JEFFREY A. CHANAY
Chief Deputy Attorney General
STEPHEN R. MCALLISTER
Solicitor General of Kansas
Counsel of Record
KRISTAFER R. AILSLIEGER
Deputy Solicitor General
NATALIE CHALMERS
Assistant Solicitor General
DAVID LOWDEN
Chief Assistant District Attorney
18th Kansas Judicial District
120 S.W. 10th Ave., 2nd Floor
Topeka, KS 66612
(785) 296-2215
steve.mcallister@trqlaw.com
Counsel for Petitioner
Kansas

SARAH E. JOHNSON
Counsel of Record
KANSAS APPELLATE DEFENDER OFFICE
700 Jackson, Suite 903
Topeka, KS 66603
(785) 368-6587
sjohnson@sbids.org
Counsel for Respondent
Jonathan D. Carr

NEAL KUMAR KATYAL
Counsel of Record
HOGAN LOVELLS US LLP
555 Thirteenth Street, N.W.
Washington, DC 20004
(202) 637-5600
neal.katyal@hoganlovells.com
Counsel for Respondent
Reginald Dexter Carr, Jr.

Petitions for Writ of Certiorari filed October 16, 2014
Petitions for Writ of Certiorari granted March 30, 2015

TABLE OF CONTENTS

VOLUME 1

Relevant Docket Entries in the Eighteenth Judicial District, District Court, Sedgwick County, Kansas, *The State of Kansas v. Reginald D. Carr*, Jr., No. 00 CR 2978 JA 1

Relevant Docket Entries in the Supreme Court of Kansas, *The State of Kansas v. Reginald D. Carr*, Jr., No. 90044 JA 7

Relevant Docket Entries in the Eighteenth Judicial District, District Court, Sedgwick County, Kansas, *The State of Kansas v. Jonathan D. Carr*, No. 00 CR 2979 JA 13

Relevant Docket Entries in the Supreme Court of Kansas, *The State of Kansas v. Jonathan D. Carr*, No. 90198 JA 18

Transcript of Motions Hearing, Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Nos. 00 CR 2978 and 00 CR 2979 (4/23/2002) JA 23
pp. 50-53, 62-67, 76 JA 25

Transcript of Pretrial Conference Motions, Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Nos. 00 CR 2978 and 00 CR 2979 (8/9/2002) JA 34
pp. 8-14, 103 JA 36

Transcript of Jury Trial Volume 40, Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Nos. 00 CR 2978 and 00 CR 2979 (11/4/2002) JA 45
Index JA 48
pp. 33, 44 JA 49

Transcript of Jury Trial Volume 41-A, Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Nos. 00 CR 2978 and 00 CR 2979 (11/5/2002) JA 52
Index JA 55
pp. 5-14, 16, 27-40, 46-56, 69-74, 79-82, 93-96, 107-121, 139 JA 57

Transcript of Jury Trial Volume 41-B, Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Nos. 00 CR 2978 and 00 CR 2979 (11/5/2002) JA 123
Index JA 126
pp. 14-16, 64-113, 143 JA 128

Transcript of Jury Trial Volume 42, Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Nos. 00 CR 2978 and 00 CR 2979 (11/6/2002) JA 185
Index JA 188
pp. 8-10, 35-37, 68-71, 76-84, 141-143, 198 JA 191

Transcript of Jury Trial Volume 43-A, Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Nos. 00 CR 2978 and 00 CR 2979 (11/7/2002) JA 215
Index JA 218
pp. 32, 34, 53-75, 80-94, 104-106, 124 JA 219

VOLUME 2

Transcript of Jury Trial Volume 43-B, Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Nos. 00 CR 2978 and 00 CR 2979 (11/7/2002) JA 263
Index JA 266
pp. 23-25, 33-35, 78-87, 102-105, 108-110, 149 JA 267

Transcript of Jury Trial Volume 44, Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Nos. 00 CR 2978 and 00 CR 2979 (11/8/2002) JA 292
Index JA 295
pp. 13-15, 40-49, 76-79, 121 JA 296

Transcript of Jury Trial Volume 45A, Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Nos. 00 CR 2978 and 00 CR 2979 (11/12/2002) JA 314
Index JA 316
pp. 4-6, 37-39, 56-59, 63-65, 108-111, 146 JA 317

Transcript of Jury Trial Volume 45B, Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Nos. 00 CR 2978 and 00 CR 2979 (11/12/2002) JA 333
Index JA 335
pp. 24-27, 36-38, 41-43, 142-153 JA 336

Transcript of Jury Trial Volume 46, Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Nos. 00 CR 2978 and 00 CR 2979 (11/13/2002) JA 356
Index JA 358
pp. 5-8, 58-60, 64-68, 98-102, 111-195, 199 JA 360

Transcript of Jury Trial Volume 47, Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Nos. 00 CR 2978 and 00 CR 2979 (11/14/2002) JA 446
pp. 3-16 JA 448

Verdict Forms Reginald D. Carr, Jr., Eighteenth Judicial District, District Court, Sedgwick County, Kansas, No. 00 CR 2978, (11/14/2002) JA 461

Verdict Forms Jonathan D. Carr, Eighteenth Judicial District, District Court, Sedgwick County, Kansas, No. 00 CR 2979, (11/14/2002) JA 477

The following opinions, decisions, judgments, and orders have been omitted in printing this joint appendix because they appear on the following pages in the appendices to the Petitions for a Writ of Certiorari:

Kansas v. Reginald Dexter Carr, Jr.

Appendix A Opinion of the Supreme Court of Kansas *(continued to Volume 2)* (July 25, 2014) . App. 1

Appendix A Opinion of the Supreme Court of Kansas *(continued from Volume 1)* (July 25, 2014) App. 222

Appendix B Jury Instructions Sentencing Phase in the Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Criminal Department Division 9 (November 18, 2002) . App. 498

Appendix C Excerpts of Transcript of Jury Trial in the Eighteenth Judicial District, District Court, Sedgwick County, Kansas Criminal Department (November 13, 2002) App. 511

Kansas v. Jonathan D. Carr

Appendix A Opinion of the Supreme Court of Kansas (July 25, 2014) . App. 1

Appendix B Opinion of the Supreme Court of Kansas in *State of Kansas v. Reginald Dexter Carr, Jr.* (No. 90,044) *(continued to Volume 2)* (July 25, 2014) . App. 67

Appendix B Opinion of the Supreme Court of Kansas in *State of Kansas v. Reginald Dexter Carr, Jr.* (No. 90,044)
(continued from Volume 1)
(July 25, 2014) App. 288

Appendix C Jury Instructions Sentencing Phase in the Eighteenth Judicial District, District Court, Sedgwick County, Kansas, Criminal Department Division 9
(November 18, 2002) App. 564

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CRIMINAL DEPARTMENT

Case No. 00 CR 2978
Case No. 00 CR 2979

[Dated November 7, 2002]

THE STATE OF KANSAS,	)
	)
Plaintiff,	)
	)
vs.	)
	)
REGINALD D. CARR,	)
	)
Defendant.	)
	)
THE STATE OF KANSAS,	)
	)
Plaintiff,	)
	)
vs.	)
	)
JONATHAN D. CARR,	)
	)
Defendant.	)
	)

JURY TRIAL
Volume 43-B

PROCEEDINGS had before the Honorable Paul W. Clark, Judge of Division 9 of the District Court of

Sedgwick County, Kansas, at Wichita, Sedgwick County, Kansas, on the **7th day of November, 2002.**

APPEARANCES

PLAINTIFF:
Ms. Nola Foulston
District Attorney
Ms. Kim Parker
Deputy District Attorney
Mr. Kevin O'Connor
Assistant District Attorney
Sedgwick County Courthouse Annex
535 North Main Street
Wichita, Kansas – 67203

DEFENDANT REGINALD D. CARR (Appearing naught):
Mr. Jay E. Greeno
Of Counsel, REALS & WEBER
Attorneys at Law
Suite 215
250 North Water
Wichita, Kansas – 67202
and
Mr. John V. Wachtel
KLENDA, MITCHELL, AUSTERMAN & ZUERCHER, LLC
1600 Epic Center
301 North Main
Wichita, Kansas – 67202

DEFENDANT JONATHAN D. CARR (Appearing in person):
Mr. Ronald F. Evans
Mr. Mark A. Manna

Attorneys At Law
Death Penalty Defense Unit
Suite 302
112 Southwest Sixth Street
Topeka, Kansas – 66603

SANDRA J. BERGER, CSR
Official Court Reporter

INDEX

Defendants' Witnesses	PAGE
THOMAS REIDY	
Continued Cross-examination by Mr. O'Connor	5
Redirect Examination by Mr. Greeno	47
PHYLLIS HARDING	
Direct/Cross Examination by Mr. Evans	52
Cross-examination by Ms. Foulston	55
Redirect Examination by Mr. Greeno	115
Recross-examination by Ms. Foulston	136
Further Redirect Examination by Mr. Greeno	140
CERTIFICATE OF REPORTER	149

SANDRA J. BERGER, CSR
Official Court Reporter

* * *

[p.23]

factor, I'm not sure.

Q. What test -- what testing do you have available to you because --

A. I'm referring to the neuropsychology report, they did an IQ test with him.

Q. A lot of the information indicates that he had many friends; is that correct?

A. That's what I've heard.

Q. There's been evidence, and I'm looking at A-26 and A-21, A-20 and A-25, that he drew pictures. Do you see that?

A. Yes.

Q. He has some artistic ability --

A. Yes.

Q. -- apparently.

A-15 indicates he knows how to write. It's a letter that he wrote to his momma.

A. Yes.

Q. There have been pictures introduced of him and what I've described as what -- or what has been described by the people who knew him at the time as a happy childhood. A-9, there he is with his dad, I imagine. A-12, right?

A. I see the pictures.

Q. And how it was described, Doctor, I know you weren't

[p.24]

here, but it was described that it was a very happy young childhood. Do you have any disagreement with that?

A. Yes, I do.

Q. And that's because you've decided subjectively that based upon what you've heard that it wasn't a very happy childhood; would that be a fair statement?

A. No, it's not a fair statement. I don't think it's subjective at all. It's based upon the information that we gathered from various family members.

Q. Some of the various family members, you would agree that you're getting conflicting information from these various family members; isn't that fair? I think you've already testified --

A. Yeah, in some instances it was -- I don't know if conflicting with, they're omissions. One person would report one thing, someone else would report something else. There were denials. So there were some conflicts.

Q. Doctor, would it be fair to say that in your experience that you would expect people to lie sometimes or not tell the truth to avoid consequences?

A. Yes.

Q. That could have happened in this case?

A. It could have.

[p.25]

Q. Now, one of the things that I forgot to mention about that Dodge City Sonic robbery, there was a cousin that he --

MR. GREENO: Your Honor, I'm going to object. I don't -- he's talked to this doctor about this Dodge City incident. I don't think he mentioned a robbery. I think he said there was an assault. A physical confrontation. But I don't think you ever talked about a robbery.

THE COURT: You're trying to say facts not in evidence?

MR. GREENO: That's correct, Your Honor. I'm sorry.

THE COURT: I'll sustain the objection.

MR. GREENO:

Q. He pled to an aggravated assault.

A. Okay.

Q. And that comports with the records you have; is that correct?

A. Yeah.

Q. And the evidence is, though, from the police reports, is that he took money from a lady --

A. Okay.

Q. -- in a book store, I believe, in a college.

A. Okay. Yes.

* * *

[p.33]

correct?

A. I don't know if it happened.

Q. Well, but you do know she denies it?

A. She denied it when I asked her.

Q. And that the incident of Temica being molested by the father, Reginald Carr, in your report on Page 6, not really report, but you typed up of what Reginald Carr had to tell you, he -- he didn't see it; is that correct?

A. That's what he indicated. And then I think he saw them lying down together. Temica, on the other hand, as I recall, thought that he saw it. So there was -- certainly from Temica's standpoint she was being sexually abused and it was occurring at a time when the boys were around. Mr. Carr was around.

Q. Or it could be a completely false statement being made against this father again, right?

A. Well --

Q. All I'm asking you is it could be, Doctor?

A. It could be, I don't -- you know.

Q. And again, I think your answer was you do not know?

A. Right. I think everything that is said could be the opposite of what's said. But I'm just going upon several people telling me the same kinds of information and trying to reach conclusions based on a

[p.34]

consensus of information, not necessarily just one report.

Q. So, Doctor, if I told you the sky was green and Ms. Parker told you the sky was green and Mr. Greeno told you the sky was green and Mr. Evans told you the sky was gieen and Mr. Manna told you the sky was green, would that mean the sky is green?

A. Well, that's somewhat of an absurd analogy.

Q. Now I'm simple and absurd.

Let's talk about the father. You put a thing up there, corrupted family influences on the father. One of the things you said was that he sexually abused the daughter and cousin. We've already covered the fact that that has been information that may be absolutely false; is that correct? It could be true, it could not be true?

A. Well, the daughter says it's true.

Q. And you didn't talk with the father?

A. No.

Q. The father in the conversation indicates that he did pay child support and continues to pay child support and, in fact, Temica called him just last week wanting money.

A. That may be, I haven't -- I don't know the -- I don't know that.

[p.35]

MR. GREENO: I'm going to object. Those are facts not in evidence. I thought Ms. Harding testified she attempted to contact her father and he wouldn't accept the call.

THE COURT: I'll overrule the objection.

MR. O'CONNOR:

Q. Now, I believe you said earlier that the human being has the ability to make choices; is that correct?

A. Yes.

Q. Regardless of any so-called risk factors that they may have in their lives?

A. No, that's not entirely true. I think what I said was that the choices that we make are shaped by the experiences that we've had as we grow up.

Q. And it could be that a choice you make has nothing to do with the experience you have. You can't tell me within a reasonable degree of medical certainty that I'm always going to be -- whatever risk factors I may have in my life, Doctor, that I'm always going to make a choice on some risk factor or maybe my dad hit me when I was five; is that correct?

A. Right. You're not going to have -- right. You're going make choices all the way along. All I'm saying is that those choices are shaped by your experiences

and you're capable of making choices as you go along.

* * *

[p.78]

Q. Including --

A. I know that.

Q. -- dental injuries; is that right?

A. Yes.

Q. Okay. So those type of things you are trained to look at and look for and as a consequence, they come to your attention because there's a -- a reason for that, to protect children?

A. Uh-huh.

Q. Is that yes?

A. Yes, it is.

Q. And one of the areas is -- well, and in your practice, Doctor, as a pediatrician, have you ever had the occasion to deal with a child that has been sexually assaulted.

A. Yes, I have.

Q. So that you were aware as well of the reporting requirements of --

A. Yes, I'm aware of the reporting requirements for sexual assault.

Q. And you take that seriously?

A. Yes, I do.

Q. Now, when your sister, Janice Harding, was living in Dodge City and when you were seeing each other, in fact, she worked for you and took care of your kids;

[p.79]

is that right?

A. Yes, she baby-sitted for me.

Q. Okay. And you trusted her with your children?

A. Yes, I did.

Q. And did they thrive under her care?

A. Yes, they -- they love my sister.

Q. And is there anything about the family relationship that you saw with your sister and your niece Temica and your nephews that would cause you any anxiety that they were being abused?

A. No, they never told me they were being abused.

Q. Did they ever tell you that they were neglected?

A. No, and they never looked neglected. They always looked real healthy, nourished. Always had fairly decent clothes, you know. And they may not had everything they wanted, you know, toy-wise and things, but they had things. So, no, I never saw where it looked like they were neglected.

Q. So --

A. They never came to me and said, Auntie, help me, you know, I'm neglected. I've been hurt, you know. They've never said anything to me, no.

Q. I'm going to ask you to speak up a little bit because sometimes at the end of your sentence your voice goes down.

[p.80]

Dr. Harding, you also had the opportunity to go to their home as well, did you not?

A. Yes, I've been to their home.

Q. And you knew that they had bedrooms with televisions and they had stereos and things that young people would want for entertainment; is that right?

A. Yes, when they got older.

Q. Right. Not things that you might have had as you were growing up?

A. No.

Q. But they were provided for in those ways as well?

A. Yep. I still don't have a stereo in my bedroom.

Q. Neither do I.

Dr. Harding, you also spent a year or more -- a couple of years with your niece Temica out in California; is that correct?

A. Yes.

Q. And you placed her into a -- a private school at that location?

A. Yes, her and my daughter.

Q. And your daughter Barbara?

A. Yes.

Q. And they were close in age; is that right?

A. Well, my daughter, about six years difference.

Q. So Temica was a little bit older?

[p.81]

A. Yes, because my daughter was -- when we moved to California, my daughter had just started kindergarten and Temica was in fifth grade.

Q. Okay. So by the time that Temica -- in fifth grade, she would have been about- --

A. Ten.

Q. -- ten. When she moved out there, her parents were already divorced at that time; is that right?

A. Yes.

Q. And the father was out of the home at that time; is that right?

A. Yes.

Q. And you had her living with you and you were the parent at that time?

A. Yes. My mother was living there at -- also. My mother was living with us also.

Q. All right. So your mother, grandma's there, the two children, and you're doing your residency and you're still working to keep this family together; is that right?

A. Yes.

Q. And did you enjoy a close relationship with Temica?

A. Yes, I did. She -- we had a good time together while she was there.

Q. And as a pediatrician, did you ever note signs of

[p.82]

abuse or neglect on your niece Temica?

A. No, I did not. Never.

Q. Now, as a young child, I'm sure that you have developed a manner as a pediatrician, you kind of seem like a pediatrician the way you talk and soft-spoken, did you -- you have that same kind of a relationship with your niece Temica?

A. Yes. I like to read to my kids. And we like to go and -- well, I like to shop. So we shopped a lot. We did a lot of things together. Went to church in California too. We talked a lot. And I know one thing that I noticed there is I would think that she would tell me if anything was going on because it seemed to me like she missed her mom. Because after she was there for a while, I knew she was kind of pining to go back because she would talk about -- that's all she would talk about, was I want to go home. And she was -- when it was time that she was ready to go back, then I went ahead and we sent her back.

Q. Do you feel that Temica trusted and loved you?

A. Yes, I think so.

Q. Did she feel safe in your home?

A. Yes.

Q. But she never told you, did she, that her father had

[p.83]

sexually molested her?

A. She never once told me that her father sexually molested her, no.

Q. Did she ever tell you that her brothers sexually molested her?

A. No, she did not.

Q. And did you know her at the time at that age when it was close in time to when it should have occurred to be a truthful child?

A. She seemed to be truthful.

Q. Did you see any evidence of anxiety or depression in her that you would see in a child who, perhaps, had been sexually exploited?

A. No, she seemed to be a very happy child. While we were in California, we did quite a few things together. And since it was my internship and residency, my first two years of internship and residency, I got a chance to do a lot of things. Like I was doc at asthma camp. So they got a lot of opportunities that they wouldn't have got. She

didn't have asthma, but she got a chance to go because I had to go.

Q. Okay.

A. And so she got a chance to go. So they got a chance to do lots of things. And we got a chance to talk in

[p.84]

lots of group activities. You know, the program that I trained in was a -- they had experts in -- who taught you sexual -- how to do a sexual abuse exam. And these same doctors that did these sexual abuse exams are the doctors that I took my daughter and Temica too. So I figured if something had happened and she didn't confide in me because she was scared to, they would have noticed. Because a lot of times you bring a child in for an exam, then they will say, well, something's happened to this child, because we were taught to do complete exams and that includes the genitalia. And no one ever said that she had had any -- any injuries that would look like she had been abused. That she never said that and they asked those questions, I know.

Q. And there are ways to just briefly look and determine the --

A. Yes, and then they asked there too.

Q. Sure.

A. And usually, you know, they'll ask -- and a child her age, when you take them to see the doctor, that's right at the age when they'll ask you to leave so that they can talk to the child alone and ask them questions because, unfortunately, nowadays, 10, 11

and 12-year-olds are smoking and drinking and doing things

[p.85]

that they shouldn't do. So they'll send you out the room so that they can ask personal questions. And then that way the child won't feel fearful.

Q. Doctor, your training would also include, as you said, not only doing the sexual assault exam, but as a pediatrician being able to recognize the changes in habits or depression in a child that might lead you to suspect abuse of a sexual nature; is that right?

A. Yes.

Q. So you would see a child that may be bed wetting; is that right?

A. Yes.

Q. Night terrors?

A. Yes.

Q. Withdrawn?

A. (Nods head.)

Q. Correct?

A. (Nods head.) Yes.

Q. Failure to thrive in the -- their environment, poor work in school. There's a number of different factors that you as a physician would look for in evaluating?

A. Some of those are not specific.

Q. That's right.

A. I can truthfully say that as my niece is concerned, she was an excellent student. Okay? She was a bed

[p.86]

wetter, but she had been a bed wetter since she was little. And then she grew out of it.

Q. Okay.

A. So it was sort of like she was there and then it went away. And those kind of things kind of just improved.

Q. So you're not --

A. So none of those things fits her. She doesn't fit a profile of a child who has, you know, been sexually abused or fearful. She even -- with some children, if they've been physically abused too -- excuse me, I have a cold I've been trying to hold off.

Q. Would you like some water?

A. Could I, please?

(Off-the-record discussion.)

THE COURT: There is some -- are we at a good place to take our afternoon recess? It's time for that.

Let's do that. We'll take a little 15-minute recess, members of the jury.

(A recess was taken from 3:02 p.m. to 3:29 p.m., after which the following proceedings were had in the presence of Defendant Jonathan D. Carr.)

THE COURT: Thank you very much.

Ms. Marquez, bring the jury, please.

[p.87]

(Off-the-record discussion.)

THE COURT: Members of the jury, continuing on with Dr. Harding. We're in cross-examination still.

Mrs. Foulston.

MS. FOULSTON:

Q. Dr. Harding, we had left off having some discussion about your niece Temica having lived with you and not having any evidence or information that ever came to your attention that she had experienced a sexual episode when living with her father; is that correct?

A. Yes.

Q. Now, at some point in time, it seems that you had the children with you at different points during their formative years and even later; is that correct?

A. Yes.

Q. And, in fact, at some point when Jonathan was living in Dodge City and had some problems with the law, you again came to the aid of the family and worked with the Court to have him live with you; is that right?

A. Yes.

Q. And how long a time did he live with you?

A. He didn't stay there that long. I remember that he was having, you know, trouble with the law. You know, he had gone on the joyride with his friend. And they

* * *

[p.102]

too much, yes.

Q. And that was -- is there a difference in perspective that one might see from a child of, say, 10 or 11 versus an adult perspective?

A. Yes, because some adults drink a lot and then they don't think they do. And -- but, you know, they do when they start to get in problems with liver disease and such. So, yes, they drink too much.

Q. I guess my question was not a good one. My question was seeing -- hearing things from children or seeing things through the eyes of a child with their limited amount of years on this earth, is it a different perspective than that which an adult would have, so if the kids are saying, you know, I see this going on and adults look back on it, would there be a difference in perspective?

A. Yes. There would be a difference in perspective. But I don't think that children -- not -- don't know that their parents drink too much. Because I can definitely say we had a relative that came to live with us because she was sick. And she was alcoholic. And we knew she drank too much because she was not supposed to drink. And my parent, which was my mother, tried to keep the drink from

her. But some kind of way she would get it anyway. And she would

[p.103]

find bottles hid here and there. And she would drink until you couldn't wake her up. So we know what being drunk means. And I think that a child knows what being drunk means.

Q. And is it -- was there any reason that you were given by any of these children that led you to have cause to concern yourself with Janice's behavior?

A. For drinking, no, just that they just felt that she drank too much. And I know that they felt that their dad had drank too much. And he had -- you know, I mean drank to the point where he was drinking not just regular alcohol but cough syrup and other things, too.

Q. Okay.

A. So --

Q. Now, under the disturbed behavior, again they say that -- apparently that your sister did not protect against allegations of sexual abuse with the children. What do you have to say about that?

A. That she didn't protect?

Q. Yes.

A. Well, if she didn't protect them and she knew about allegations, then I think that that was wrong.

Q. But if she didn't know --

A. Then there's nothing she could do about it. There are kids that hide that kind of stuff for years and then

[p.104]

all of a sudden they come out and say I was abused.

Q. Now, your niece Temica didn't come out with it until in this Court and after talking to Dr. Reidy in 2002. That's when we heard the first report from Temica about this sexual assault. And based on your knowledge, was that surprising?

A. Well, yeah, I just heard about it today. Because I -- I haven't been listening to the trial. You know, when I came up here -- the day that she testified, I was up here, but I couldn't listen to the trial because I was trying to keep my little boy from coming in here.

Q. Okay.

A. Okay? So I didn't hear her. So it wasn't until somebody mentioned to me that they had heard these things that I said, oh, you know. And it -- it shocked me. It surprised me, I didn't know.

Q. And your -- your two children are out there with your sister; is that right?

A. Yes.

Q. And she's a -- she cook for them, too?

A. Sometimes. When they're -- yeah, when they come -- when they go over to her house after --

Q. Okay. So they sometimes go to her home?

A. Yes, if I'm busy, have a C section or something and I'll call her up and say can you pick them up because

[p.105]

I'm running late, and then she goes and she feeds them.

Q. And apparently Christopher, your son, likes the way she cooks Thanksgiving?

A. No, she likes the way I cook Thanksgiving.

Q. Oh, all right. Okay. All right.

The disturbed parental behavior that they suggested of your sister was that she displayed minimal to no affection to her children. Do you have a comment on that?

A. Well, that surprises me too.

Q. Why's that?

A. You know, I don't know, I just -- I'm just shocked over a lot of these things that I'm hearing now, you know, but I can -- I wasn't -- maybe it's because I was -- I graduated from high school, I went straight to college. I came home to visit and, you know, I always enjoyed going to see my sisters and brothers. I still do because I'm a family-oriented person. I like family. I love children. I loved her kids. It made me very happy when she had kids. I would have wanted all of them. I was jealous of her. I had to choose between career and kids. I didn't have any kids of my own. All my kids were adopted, okay? So, you know -- and you know, she has kids and then I have

* * *

[p.108]

A. Yes.

Q. And your nephew Jonathan and your nephew Reginald, do either of them qualify as being emotionally disturbed?

A. I don't know. I've never really made the diagnosis on them. I don't know.

Q. Just from your day-to-day contact, do they appear to be emotionally disturbed?

A. Gosh. That is a hard call. Well, sometimes I used to feel that they were emotionally labile, especially, you know, just like angry sometimes. Reginald especially. Jonathan, you know, sometimes. But emotionally disturbed, per se, I couldn't really say. I'm not a psychologist, per se. And, you know, and even with my own children, I didn't make the diagnosis. I knew -- I knew it was something wrong and I took them to be seen by somebody when I started to realize it was something wrong.

Q. But when you were around these children at that same age, was there anything that led you to believe that these children were abused or neglected or emotionally disturbed?

A. No, I -- I felt that they might have been some problem with learning disability at one time with Jonathan. And I thought that that made him have some -- some -- maybe some self-esteem problems and such. And, you

[p.109]

know, and counseling-wise with Reginald, I know he had what appeared to be some problems, you know, which I thought were maybe emotional problems because of the loss of his father. Well, you know, not, you know, physical loss, but emotional loss of his father as such, and that might be considered as emotional disturbance in a child.

Q. There's an allegation that -- of disturbing parental behavior by your sister Janice, suggesting that she would be gone for weeks, sometimes with a boyfriend, and left the children alone to care for themselves. Do you know of any incidents of that nature?

A. I -- you know, she was -- I was told that there were times because I had relatives who said that she would bring the kids over to their home and leave them, with they dad too. And they would be there for a long time and then they would come back and get the kids. But I never heard of the kids being left in the home alone. And, you know, what age did this happen at? Because it seems to me if they were by themselves they would have called somebody if their parents didn't come home. Because they had grandmas on both sides of the family, aunts, uncles that were all adults that they could've called.

Q. This was represented as gone for weeks, sometimes with

[p.110]

boyfriend and children left to care for themselves.

A. No, I didn't know about that. So you have to ask whoever gave you that report.

Q. That would be Dr. Reidy.

A. Oh, well. You have to ask him where he got the information because they didn't get it from me because I didn't know about that.

Q. Is there a paternal aunt by the name of Demetris White?

A. Yes, that's his -- their father's sister.

Q. Reginald Carr, Senior's, sister; is that correct?

A. Yes.

Q. Now, after the divorce, did the families have consistently good relationships between Hardings and the Carrs?

A. Well, I didn't really know them that well. I wasn't around them. I know -- I have talked to -- and they call her Metris for short, on occasion. So -- and she seems to be okay, you know. But I don't know what -- I don't know if there's that good of a relationship between Janice and Metris. But I think that maybe Temica and her aunt, there's a fairly -- there's a pretty good relation between them. And --

Q. Let me --

A. -- I don't know about the boys, whether or not they

* * *

[p.149]

CERTIFICATE

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

I, Sandra J. Berger, a Certified Shorthand Reporter, and a regularly appointed, qualified, and acting Official Reporter of the 18th Judicial District of the State of Kansas, do hereby certify that as such Official Reporter, I was present at and reported in Stenotype shorthand the above and foregoing proceedings in **Case No. 00 CR 2978, *THE STATE OF KANSAS, Plaintiff, v. REGINALD D. CARR, Defendant,*** and **Case No. 00 CR 2979, *THE STATE OF KANSAS, Plaintiff, v. JONATHAN D. CARR, Defendant,*** heard on the 7th day of November, 2002, before the Honorable Paul W. Clark, Judge of Division No. 9 of said Court.

I further certify that at the request of Debra J. Wilson and Rebecca E. Woodman, Capital Appellete Defenders, a transcript of my shorthand notes was typed by me or under my supervision via computer-aided transcription, and that the foregoing transcript Volume 43-B, consisting of 148 typewritten pages, is a true copy of all of the proceedings, all to the best of my knowledge and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Wichita, Kansas, this 21st day of March, 2003.

/s/Sandra J. Berger
SANDRA J. BERGER
CERTIFIED SHORTHAND REPORTER

SANDRA J. BERGER, CSR
Official Court Reporter

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CRIMINAL DEPARTMENT

Case No. 00 CR 2978
Case No. 00 CR 2979

[Dated November 8, 2002]

THE STATE OF KANSAS,

Plaintiff,

vs.

REGINALD D. CARR,

Defendant.

THE STATE OF KANSAS,

Plaintiff,

vs.

JONATHAN D. CARR,

Defendant.

JURY TRIAL
Volume 44

PROCEEDINGS had before the Honorable Paul W. Clark, Judge of Division 9 of the District Court of

Sedgwick County, Kansas, at Wichita, Sedgwick County, Kansas, on the **8th day of November, 2002.**

APPEARANCES

PLAINTIFF:
Ms. Nola Foulston
District Attorney
Ms. Kim Parker
Deputy District Attorney
Mr. Kevin O'Connor
Assistant District Attorney
Sedgwick County Courthouse Annex
535 North Main Street
Wichita, Kansas – 67203

DEFENDANT REGINALD D. CARR (Appearing in person):
Mr. Jay E. Greeno
Of Counsel, REALS & WEBER
Attorneys at Law
Suite 215
250 North Water
Wichita, Kansas – 67202
and
Mr. John V. Wachtel
KLENDA, MITCHELL, AUSTERMAN & ZUERCHER, LLC
1600 Epic Center
301 North Main
Wichita, Kansas – 67202

DEFENDANT JONATHAN D. CARR (Appearing in person):
Mr. Ronald F. Evans
Mr. Mark A. Manna

Attorneys At Law
Death Penalty Defense Unit
Suite 302
112 Southwest Sixth Street
Topeka, Kansas – 66603

SANDRA J. BERGER, CSR
Official Court Reporter

INDEX

State's Witnesses	PAGE
MITCHEL A. WOLTERSDORF	
Direct Examination by Mr. Greeno	4
Direct Examination by Mr. Greeno	9
Cross-examination by Mr. O'Connor	54
Redirect Examination by Mr. Greeno	87
CERTIFICATE OF REPORTER	121

SANDRA J. BERGER, CSR
Official Court Reporter

* * *

[p.13] [*Cont. Direct Examination of Mitchel A. Woltersdorf by Mr. Greeno*]

diagnose it.

Q. And you get a lot of referrals from doctors to do the testing to determine what is wrong with somebody's brain; is that correct?

A. Yes, we see about 15 to 1800 patients a year.

Q. Okay. And how many -- you referred to traumatic brain injury as TBIs?

A. Yes, TBI.

Q. How many traumatic brain injuries have you examined so far in your career, do you know?

A. It's a little bit over 10,000 right now since 1990. We do about 800 a year here.

Q. Okay. Pursuant to our request specifically, what test did you administer in this case?

A. You want me to repeat the ones I mentioned earlier?

Q. Yeah.

A. The battery consists of the Wechsler Adult Intelligence Scale, Third Edition, which is an IQ test; the Wide Range Achievement Test, Third Edition, which is an achievement test, reading, writing, math; the Memory Assessment Scales, which is a test of memory; the Halstead-Reitan Battery, which is a group of tests numbering

anywhere from seven to nine depending on how they're administered; and then two psychological batteries, the MMPI-2, which is called

[p.14]

the Minnesota Multiphasic Personality Inventory, Second Edition; and the Milan Clinical Multiaxial Inventory, Third Edition, which is called the MCMI, 3. That's the entire battery that we used.

Q. In addition to those tests, was an interview conducted with Mr. Carr?

A. Yes.

Q. What was the purpose of that interview?

A. Basically if I were -- if I was going to go on the assumption that we were looking at somebody with a brain disorder that could lead to violent behavior, we were looking at, again, TBI or seizure disorder. So the interview was basically to get a feel for has Reginald ever been knocked out, was he familiar if he ever had a seizure, woke up on the floor, didn't know how he got there, things of that nature, to get a feel for the historicity, or the stuff that came before my seeing him.

Q. Did you get information from Mr. Carr that was significant?

A. Yes, without specifically having dates depending on. He mentioned he had been knocked out in fights a number of times. He denied to me any physical abuse of -- when he was a child. So he did not report any knockouts in grade school. He did not appear to have

[p.15]

any phenomena that looked like seizure disorders. He did report that he had a pellet or a BB in the right posterior portion of his skull. And he indicated that he had been in the hospital a long time after birth but did not know why.

Q. Okay. In addition to the tests that you performed, did you request additional testing?

A. When I -- yes, when I spoke with your office, I asked that we get a PET scan, an MRI and an EEG.

Q. Thank you. And were the results of those tests provided to you?

A. Yes.

Q. Okay. We've already heard about the PET scan. What do we learn from the MRI and the EEG?

A. The MRI was normal and the EEG was normal.

Q. Okay. And we'll get back to that later on. Was there any history of any previous neuropsychological testing with Mr. Carr?

A. Not that he was aware of.

Q. When you administer neuropsychological testing, are there any procedures or norms that are established by the test manuals?

A. Yes, each test manufacturer produces a manual that requires the technician -- and just for clarity's sake, I do the interview and a technician, much like a

* * *

[p.40]

order in which the tests were done, so now we're almost at the end of the day, we know that he didn't try to malinger on any of the cognitive, the thinking parts of the tests, so now you want to make sure that he doesn't malinger on the emotional parts of the test. So had he malingered on both the MMPI-2 -- and remember, malingering is faking, try to look worse than you are. If he would have malingered on the entire MMMP-2 and MCMI-III, then that would have been a confound for me. I didn't have that so I was comfortable with it.

Q. Okay. What did these tests -- what results do these tests produce? What did you learn?

A. The MMPI-2 produced a -- what's called a 2, 4, or a 2, 4, 6 profile, which basically means that of the scales that are on the MMPI, scale 2, which is depression, scale 4, which is antisocial problems, scale 6, which is distrust or paranoia, were elevated excessively.

Q. What does that mean?

A. Well, I was getting to that.

Q. Okay.

A. What you have to then do is you have to make sure that those scales -- because 2 and 4 can be elevated in the head injured population because if you have a significant head injury you can be depressed and you

[p.41]

can have loss of anger management issues which is scale 4 coming up, the -- the antisocial scale. So what you do is you look at his individual responses to make sure that he's not endorsing the same questions TBI patients endorse to elevate those scales. It's called a Gass adjustment, G-A-S-S, for the researcher that created that adjustment profile. And in Reginald's case there were no Gass items so that means that the 2, 4, 6 profile is not related to the head injury, it's chronic and it's been there forever.

Q. Okay. So what does that mean?

A. Reginald has antisocial personality disorder.

Q. Okay. And what is antisocial personality disorder?

A. It's an aberration of -- well, let me do it this way. If you -- if you look at the 12 personality disorders that exist, like antisocial, narcissistic, avoid and schizoid, if you look at those disorders -- all of our personalities are made up of those disorders. I have 12 personality disorders, so to speak, inside of me and you have 12 inside of you and everyone else in this room has 12 of those disorders. What makes us not disordered is that we pick and choose which section of our personality we're in at the appropriate time. So like, for example, you know, antisocial personality is kind of the person who's against

[p.42]

authority. And so if I'm in a situation where I think I need to put my bars up, so to speak, and to hold off someone who I find threatening, I step into my antisocial component of my personality and recognize my right to review authority. And if I'm with somebody that I'm really uncomfortable with and I want to get away from them, I kind of step into my schizoid compartment and I make excuses to withdraw.

What makes a person disordered is they're are unable to pick which 12 compartments they are in. They stick in one all the time. So when you're at a party, you're antisocial; when you're at work, you're antisocial; when you're with your girlfriend, you're antisocial. And that's what makes a person disordered.

And in Reginald's case, the antisocial personality will show itself in difficulties with anger management and difficulties with authority which is the two hallmarks of antisocial personality disorder. There is no treatment for a personality disorder. It's something that he was given, so to speak, in life, somewhere between birth and the fifth year of life. It's something that occurs very early in the first five years of life. And it eventually manifests itself by the adolescent years.

[p.43]

Q. Okay. Does antisocial personality disorder necessarily mean that you're going to be a criminal?

A. It does not necessarily mean that you're going to have a criminal history. When I was going through school the professors tried to get us to understand just the personality disorders by seeing movie characters that could stick in our head, so to speak. And if you were -- if you thought of, like, Hannibal Lector, for example, he would not be the antisocial personality character in a movie. James Bond would be your antisocial personality. So again, not a criminal, but a person who liked to exercise his right to deny authority or authoritative lines. So it's not necessarily a dangerous person, but it is one who has their own social norms and they break others.

Q. So what kind of personality disorder would Hannibal Lector be?

A. He's probably narcissistic or paranoid which are the two dangerous personality disorders.

Q. Okay. What -- what -- in your report you talk about some of the profiles and things that would manifest themselves because of this personality disorder; is that correct?

A. I'm not sure where you got that, Mr. Greeno.

Q. Well, I'm not sure where I --

[p.44]

A. -- understand your question.

Q. I'm not sure where I got it either. There's a section in your report when you talk about in addition to -- the addition of scale 2, depression, to the 4, 6, 6, 4 --

A. Thank you.

Q. -- do you see what I'm taking about? What is that all about?

A. Basically what I do on these forensic evaluations is you can kind of -- you can freely interpret the MMPI because it looks kind of like an EKG. And you can just kind of scan it and see that it's a 2, 4, 6 and say, well, this person is depressed, scale 2, this person has antisocial tendencies, scale 4, and this person has a lot of distrust, scale 6. But in forensic settings, what I prefer to do is quote the literature so that people don't think I'm just winging it on the interpretation. So what I did is quoted the literature for a 2, 4, 6 profile which talks about the three things I've already talked about.

Q. Okay. What about this -- there's a mention in there of diagnosis of borderline personality.

A. Yes. A 2, 4, 6 on the MHPI has a high rate of being borderline personality disorder. That's one of the 12 we've already talked about. And that's one of the

[p.45]

reasons why you do the MCMI-III, the one that looks at old and new issues because the MCMI has actually all 12 scales for all 12 personality disorders on it. So you can look at the MCMI-III to kind of help you understand what personality disorder is on the MMPI-2. And on the MCMI-III it was antisocial and not borderline.

Q. Okay. Was that profile used to determine if there were any traumatic brain injury factors?

A. Yes, that's what I mentioned earlier about the Gass adjustment. You look to see whether or not any of this 2, 4, 6 was created by Mr. Carr having a brain injury. And there were no Gass items indicated so it -- this 2, 4, 6 is -- has nothing to do with having a dysfunctional brain.

Q. What about the MCMI-III, was there anything that you learned in addition from the MMPI from that test?

A. Yes, again it supported the antisocial personality disorder. It also showed that Mr. Carr has difficulties with substance abuse.

Q. Okay. In summary, what did all of this testing tell you?

A. Somewhere in Mr. Carr's life he had significant head trauma or traumas with a number of knockouts. It could be any number of times he would have had

[p.46]

sufficient impact to cause brain damage. More than likely the trauma we're looking at, though, was not recent, it was probably quite old, somewhere in the first eight, nine years of life. And the reason for that is because of the fact his achievement scores are kept up to pace with his eighth grade education. And he basically has a damaged brain.

Q. Were you able to -- to opine as to where the brain was damaged as a result of these tests?

A. Well, remember, the things we've talked about so far is the fact that on IQ we had this very terrible

left hemisphere and also we had very poor auditory verbal memory in one area on the left hemisphere. So the left hemisphere's probably the worst hemisphere that Mr. Carr has. That's the left side of his head. And that's where school is at which would also support why he did very poorly in school.

We also found some damage on the right-hand side, not as significant as on the left-hand side. And whether or not both occurred at the same time or he got three or four different blows, there's no way to sort that out, or whether or not it was even a birth trauma issue in addition to other blows from physical abuse because, again, I don't have birth records and I just know that supposedly he was in the

[p.47]

hospital a long time.

Q. Did Mr. Carr view himself as a brain-damaged individual when this testing was done?

A. That was the first thing I asked Mr. Carr in the interview because I wanted to have a feel for whether or not a patient knows that they are TBI and that means that they may have been told about the TBI life-style. When we work with TBI patients, when we're releasing them to kind of go back into the community, we teach them about the TBI life-style it's called. And to educate the person to make good choices. And I wanted to make sure that he hadn't heard that which means then he would have obviously had that discussion sometime in the past with either a doctor or a parent.

Q. Well, what kind of -- what kind of a T -- you mentioned TBI life-style, what is that?

A. A person with a head injury has to make some wise choices to prevent that head injury from ruining their life. For example, we get them off caffeine. Caffeine is a large problem for head injured individuals. Just like bright lights can be a problem and a lot of noise can be a problem because they're stimulations. Caffeine is our only legal stimulant and most people overconsume caffeine. And so a head

[p.48]

person injured person who overconsumes caffeine will have difficulties in the areas of their deficits as well as emotional control.

We try to get them to be abstinent. They cannot drink alcohol. Alcohol is a toxin, just like illicit substances. So we try to keep them off any illicit, recreational drugs. Because if they do not do that, they are adding problems. And the two ways we tend to see the problems occur is either in a very passive life-style, you kind of became paperweights or slugs, lack of initiative, or they become violent and aggressive.

Q. Does it sometimes manifest itself in the loss control?

A. That's what I was meaning in terms of aggression or violence.

Q. Okay. In this particular situation, would you -- were you curious as to what Mr. Carr had ingested on the date of the crimes that he was charged with?

A. He reported that he had used alcohol and marijuana.

Q. What would that tell you?

A. He wasn't living a TBI life-style.

Q. What about the -- what did you find in regard to the presence or what significance did you make out of the finding of the chronic personality problems?

A. Well, again, as I mentioned earlier, personality

[p.49]

disorder, you cannot treat it. I mean a person was made this way in the first five years of life, usually by a family situation. There's no pills to throw at it, there's no therapy you can do. So since you're looking at a person who not only has head injury, you're looking at someone with a chronic personality disorder, you're going to have -- think of it this way.

If Mr. Carr was a regular patient, not a forensic client, we would typically place him on a medication like Tegretol or Depakote because it works very well for mood control and anger control. We get them on a TBI life-style, swearing off caffeine, illicit substances, alcohol. But with a person who would be a patient, not a forensic client, who also came in with an antisocial personality disorder, we would be worried about compliance because, remember, the antisocial person wants to go against lines of

authority. I'd be a line of authority and so I have difficulties with my patients who are antisocial who have medical problems with compliance. So the likelihood that Mr. Carr would follow through with the use of proper medications and with a TBI life-style is probably unlikely.

Q. Okay. So within the contents of the forensic

* * *

[p.76] [*Cont. Cross-examination of Mitchel A. Woltersdorf by Mr. O'Connor*]

question. And that there is something wrong with my mind; he answered false. Which would be consistent with the other answers about there's no little voices in his head.

A. Correct.

Q. He answered true to the question that I'm entirely self-confident. And at the -- I believe it's getting near the end of the MMPI-2, there are questions that said -- one of the questions is at times I have been so entertained by the cleverness of some criminals that I have hoped that they would get away with it; and he answered true. You wouldn't disagree with that?

A. No, the only -- keep in mind, though, that in the report I mentioned that the second half of the test was malingered.

Q. Okay.

A. So you may find once you get past Question 370 that there may be some inconsistencies.

Q. Well, this is Question 250.

A. Okay.

Q. So this is the valid part of the test.

A. Okay. When you said the second half, I thought you were near the end.

Q. I thought -- well, for me 250 is a lot of questions.

[p.77]

A. It's 567 total.

Q. 263, so we're still in the valid part of the test, where's he's -- at least what you can determine from your tests is that he's telling the truth?

A. Yes.

Q. Mr. Carr answers false to the question I am always disgusted with the law when a criminal is freed through the arguments of a smart lawyer; he answered false, you wouldn't disagree with that?

A. No.

Q. Okay. Now, we talked about this a little bit, some of the things he told -- and I believe you've agreed with me that some of the things he told you appear to be inconsistent, at least with what he told Mr. -- or Dr. Reidy.

A. It appears so on the surface, yes.

Q. At least the part about losing consciousness. Now he talked to -- now we know that he talked to Reidy actually -- or Dr. Reidy over a year later than when he talked to you.

A. Yes.

Q. Would that be consistent with somebody who is -- could be consistent possibly, you wouldn't be able -- you can't predict, but could it be consistent with people that are crafting a social history?

[p.78]

A. Yes, it could be.

Q. And that's not to say that based upon what you've talked to Mr. Carr about that he didn't have a perfect childhood, but it would be consistent with maybe somebody trying to make it worse?

A. It's possible. But again, remember, my interview was more concerned with the neurological components of his life. I didn't pursue any of the parental or familial or sexual issues.

Q. And you were not provided with from -- you were not provided with documentation of these head injuries where he said he lost consciousness?

A. That's correct.

Q. Okay. And one of the things I believe you discussed is that he told you that he spent a great deal of time in the hospital after birth.

A. Yes.

Q. What the evidence has come out is that he was premature and that he was jaundiced. And, you know, for example, my first child was premature, spent a long time, he was jaundice too, and all of my kids have been jaundiced. That's not unusual; is that correct?

A. That's correct.

Q. So it was explained to this -- in-court testimony is

[p.79]

that there was no brain injury when he was born, it was just simply premature.

A. Thank you.

Q. Now, there was -- and I don't -- I think you were aware of that there was an MMPI-2 and an MCMI done back in 1996 on Mr. Carr.

A. Actually, I was aware of the MMPI-2. I was not aware of the MCMI-III.

Q. And in that -- in addition to a provisional diagnosis and diagnosing him as antisocial personality disorder, they also go on and give clinical impressions. Were you -- did you have access -- were you provided with this?

A. No.

Q. Okay. And I believe that you would say it doesn't really make a difference because they come to the same diagnosis but, nevertheless, you were not provided with this?

A. Correct. I was aware of it. I did not have the actual profiles.

Q. Mr. Carr in this clinical impression, it appears he talked to whoever performed these tests on him. And this was after the convictions out of Dodge County that -- or Dodge City that you may not know

of or care about, but that's why they were doing this. I believe

* * *

[p.121]

CERTIFICATE

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

I, Sandra J. Berger, a Certified Shorthand Reporter, and a regularly appointed, qualified, and acting Official Reporter of the 18th Judicial District of the State of Kansas, do hereby certify that as such Official Reporter, I was present at and reported in Stenotype shorthand the above and foregoing proceedings in **Case No. 00 CR 2978, *THE STATE OF KANSAS, Plaintiff, v. REGINALD D. CARR, Defendant,*** and **Case No. 00 CR 2979, *THE STATE OF KANSAS, Plaintiff, v. JONATHAN D. CARR, Defendant,*** heard on the 8th day of November, 2002, before the Honorable Paul W. Clark, Judge of Division No. 9 of said Court.

I further certify that at the request of Debra J. Wilson and Rebecca E. Woodman, Capital Appellete Defenders, a transcript of my shorthand notes was typed by me or under my supervision via computer-aided transcription, and that the foregoing transcript Volume 44, consisting of 120 typewritten pages, is a true copy of all of the proceedings, all to the best of my knowledge and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Wichita, Kansas, this 21st day of March, 2003.

/s/Sandra J. Berger
SANDRA J. BERGER
CERTIFIED SHORTHAND REPORTER

SANDRA J. BERGER, CSR
Official Court Reporter

IN THE EIGHTEENTH JUDICIAL DISTRICT DISTRICT COURT, SEDGWICK COUNTY, KANSAS CRIMINAL DEPARTMENT

Case No. 00 CR 2978
Case No. 00 CR 2979

[Dated November 12, 2002]

THE STATE OF KANSAS,

Plaintiff,

vs.

REGINALD D. CARR, Jr.,

Defendant.

THE STATE OF KANSAS,

Plaintiff,

vs.

JONATHAN D. CARR,

Defendant.

VOLUME 45A
TRANSCRIPT OF JURY TRIAL
NOVEMBER 12, 2002

Proceedings had before the Honorable Paul W. Clark, Judge of Division No. 9 of the District Court of

Sedgwick County, Kansas, in the Eighteenth Judicial District, at Wichita, Kansas, on the 12th day of November, 2002.

APPEARANCES:

Ms. Nola Foulston, District Attorney, Ms. Kim Parker and Mr. Kevin O'Connor, Assistant District Attorneys, Sedgwick County Courthouse, 535 N. Main, Wichita, Kansas 67203, appearing for the State of Kansas.

Mr. E. Jay Greeno, Attorney at Law, 250 N. Water, Suite 215, Wichita, Kansas 67202, and Mr. John V Wachtel, IV, Attorney at Law, Klenda, Mitchell, Austerman & Zuercher, 301 N. Main, Suite 1600, Wichita, Kansas, 67202, appearing for the defendant, Reginald D. Carr, Jr.

Mr. Ron Evans and Mr. Mark A. Manna, Attorneys at Law, Death Penalty Defense Unit, 112 S.W. 6th, Suite 311, Topeka, Kansas 66603, appearing for the defendant, Jonathan D. Carr.

CONNIE UPHAUS, CSR

INDEX

FOR THE DEFENDANT, JONATHAN D. CARR

MARK DOUGLAS CUNNINGHAM, Ph.D.

Direct examination by Mr. Evans	4
Voir Dire by Ms. Parker	21
Direct examination cont'd by Mr. Evans	37

CONNIE UPHAUS, CSR

* * *

[p.4]

THE COURT: Ms. Marquez, bring the jury, please.

(at which time, the jury entered the courtroom, after which the following:)

THE COURT: Good morning, members of the jury. I trust your Veteran's Day was a good holiday. We're ready for the next witness. The lawyers have agreed to call the next witness out of turn. Ms. Uphaus, administer the oath, please.

(at which time, the witness was sworn by the court reporter, after which the following:)

THE COURT: Mr. Ron Evans for defendant, Jonathan Carr.

MARK DOUGLAS CUNNINGHAM, Ph.D., having been first duly sworn, testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. EVANS:

Q. State your name for the record, please.

A. Mark Douglas Cunningham.

Q. You know, Dr. Cunningham, it might be easier if you take the chair behind you until the PowerPoint presentation starts.

A. (witness complies.)

Q. What's your occupation?

[p.5]

A. I'm a clinical and forensic psychologist in private practice.

Q. Where is your home?

A. Lewisville, Texas. It's a suburb of Dallas.

Q. How long have you been a psychologist?

A. About 24 years.

Q. Please explain to the jury what is a clinical psychologist?

A. Clinical psychology is the evaluation and treatment of psychological disorders.

Q. What's a forensic psychologist?

A. Forensic psychology is the application of psychological research and techniques to legal issues. It's any way that psychological research or -- or interviews or information can be helpful in some issue that's before the court, all the way from evaluations in child custody situations in criminal court, things like competency to stand trial or mental state at the time of offense or sentencing determinations, such as are being considered today.

Q. Now, you've been licensed as a psychologist various places; is that true?

A. Yes, sir.

Q. Where?

[p.6]

A. Well, I was initially licensed as a psychologist in Connecticut when I was a psychologist with the Navy there. I then moved back to Texas and am currently licensed in Texas, Louisiana, Arkansas, Tennessee, South Carolina, Indiana, Illinois, Colorado, Idaho, Oregon and New Mexico. I may have left one out. Eleven states in all.

Q. So your practice is national in scope?

A. That's correct.

Q. How long have you been licensed?

A. I was first licensed in Connecticut in 1979 or 1980.

Q. So about --

A. About 22, 23 years, yes, sir.

Q. Now, give us a brief summary of your educational background as it relates to psychology.

A. Well, I received my undergraduate degree with high honors from Abilene Christian College in 1973. I then attended graduate school at Oklahoma State University in a doctoral training program that was accredited by the American Psychological Association as a clinical psychology doctoral training site and got both my Masters and Doctorate degrees in clinical psychology from Oklahoma State.

* * *

[p.37]

DIRECT EXAMINATION (CONT'D)

QUESTIONS BY MR. EVANS:

Q. Dr. Cunningham, so the record is clear, you were asked about a letter that you sent to the Department of Justice, that would be to Ms. Peggy Griffey; is that right?

A. That's correct.

Q. She's the director of the capital case unit, United States Department of Justice. You sent that to her in Washington D.C.; is that right?

A. That's correct.

Q. You've also sent a letter to Dr. -- Mr. Lindsey Roberts, the training director for the Texas District Attorneys Association; is that right?

A. That's correct. I was offering to provide training seminars free of charge to prosecutors. The one to Ms. Griffey involved both an offer to provide education services to U.S. attorneys as well as to provide consultation in a capital case free of charge, up to a hundred hours.

Q. Also, you sent a letter to Mr. Alan Levy, chief of the criminal division of the Tarrant County DA's office. That's in Forth Worth, Texas; is that right?

A. That's correct, also offering to provide

[p.38]

training for his staff, free of charge, and offering to consult on a state capital case in the Dallas area where I live free of charge up to 80 hours.

Q. Turning to this case -- Jonathan Carr.

A. Yes, sir.

Q. What information did you gather or review in preparation for your testimony today?

A. Well, I interviewed a number of people. I interviewed Jonathan Carr first in April of 2001 for four and-a-half hours. I saw him again, then, the next April of 2002 for about an hour. Also in April 2002, I interviewed his mother, Janis Austin, for just a little less than three hours -- two hours and 52 minutes. I interviewed Phyllis Harding, his maternal aunt, for an hour and five minutes. I interviewed Temica Harding, his sister, for an hour and 45 minutes. I subsequently did a number of telephone interviews. I had a telephone interview of Temica Harding for 11 minutes. I had a telephone interview of Bernice Demetrius -- she goes by Demetrius -- White, who is a paternal aunt. This is the sister of Reginald, his father. I interviewed her by phone for an hour and 10 minutes. Then I called her back and -- and

[p.39]

interviewed her for 20 minutes. I subsequently called her back again and interviewed her for six minutes. The callbacks were to seek additional information and to try to clarify any discrepancies of reports that I heard. I interviewed Jennifer Fayad who is a frateral

cousin. This is Demetrius' daughter who grew up with Reggie and Jonathan and Temica and interviewed her by phone for 24 minutes.

Q. Ms. Fayad would be approximately the same age as Temica; is that right?

A. That's correct. They are like a month apart in age.

Q. Okay.

A. I did a telephone interview of Dorothy Wiley, who is the paternal grandmother for 45 minutes. Telephone conference call between Demetrius and her mother, Dorothy, for three or four minutes, again, to clarify the history that I was getting. I had a telephone interview of Roshell Cossman who is the mother of Devin, one of Reggie's children. I talked to her by telephone for 14 minutes, and then I interviewed Anita Lumpkins who is a stepmother of Jonathan and Reggie. This is who Reginald, their father, married after he left Janis and they were married for two to three years and had two children

* * *

[p.56]

damage ends up being expressed in other ways. So instead of moving into criminal violence, they are more likely to become sexually active early, to have a child out of wedlock, to marry early, to be in abusive relationships. They have problems with depression and anxiety. Their lives are significantly impacted; just not in a criminal way. And you can see this even in terms of demographics that about 90 percent of prison inmates are male, and that proportion is that high or

higher for violent offenders. And so being female is a very significant protective factor.

Intelligence is a protective factor, assuming that you are somebody who is extremely smart, you are college bound, and so then when you get to school, school is a place of great success for you, and however chaotic or out of control things are at home, when you get to school, that's a place that you succeed and you get a lot of strokes and people begin to mentor you and that opens up other avenues for you to go into.

A positive social orientation identifies -- this and the resilient temperment -- means that -- the kid can simply tolerate and weather a good deal of adversity and keep striving

[p.57]

to the top. Those of us that have had more than one child realize that our kids are different from the moment they were born in terms of their ability to tolerate changes and stress and relocations and other things, and some of them are just hardier than others and have a more naturally positive bend in their relationships. Now, Jonathan does have some elements of positive social orientation in that he was described by his family as being tender-hearted, affectionate, sensitive to others' feelings in the household, that he was the one to get his mother -- get his mother flowers or crawl up in bed with his aunt and put his head on her shoulder, even as a teenager, that there were elements of his disposition that were more positive in terms of social relationships, but did not appear to have had a resilient temperament.

The social bonding to positive role models was quite limited in his family. The family members in his immediate household were not modeling positive behaviors. And his contact with other family members, Demetrius' family or Dorothy Wiley, his grandmother, were disrupted and infrequent enough, he's just not there long enough to really become part of that value system and

[p.58]

world.

Q. Immediate family members, we're talking about Janis?

A. Janis. Reginald. Rick.

Q. Reginald, Senior?

A. That's right. Reggie. Immediate family.

Q. Now, family members, aunt Phyllis -- looking for a positive role model, aunt Phyllis is a physician -- she's a medical doctor. She has been here. The jury has seen her testify. Isn't that a positive role model?

A. Yes, sir. Although, again, his contact with her is intermittent. He's not around her much at all as she is in medical school and then she began to work as a physician across the early years of his life. He does go to live with her in Brownsville when he's about nine years old and she described him as there for third and fourth grade. He's there a couple of years, then later he lives with her again in Wichita Falls, but we are getting pretty late in the game by the time that he's nine.

Q. Late in the game. You mean late in adolescence?

A. Late in the childhood game, late in the identifying with your family members and seeing

[p.59]

this is the person that emulates, that -- that is better than being 19 when that starts, but you have lost some pretty important years in the meantime. And then it's not continuous. He's with her for a year or two, and then back with her again and not on an ongoing basis where he is in a position to really become her child and adopt her value system.

Q. You were working your way through that model. Continue, please.

A. There are apparently teachers and coaches that responded positively to Jonathan, although he's moving so much as he is shifted from one family member to another, that there's little opportunity to be in a longstanding, mentoring relationship. He has difficulty making friends. Again, he's moving repeatedly and so his peer group is disrupted. And he's having learning disability problems as well. There are not healthy beliefs or clear standards of behavior in his family of origin with Reginald and Janis or with Janis and Rick, and there were not effective interventions. At the time that he is -- that he is sent away following this allegation of being involved in a group rape of a peer-aged girl when he was nine years old. The response to that was to send him to his aunt

* * *

[p.63]

A. That's correct. He has four of five school factors, two of three peer factors. Again, the poverty is a -- that perhaps should be plus-minus. There is a subjective experience of it in terms of -- as I described the meals and that ultimately his sister is buying clothes for him and that sort of thing as she begins to work, but not a general household level of poverty. And he has four, perhaps five of those factors, depending on how you read the poverty.

Q. The community and neighborhood factors -- he's got all five of those?

A. Yes.

Q. Four or five of those?

A. At least four or five of those, again, depending on the neighborhood. Some of the neighborhoods that he's in are better than others. Others that he's in, there are a significant amount of drug trafficking that appears he may be involved in.

Q. I see situational factors down at the bottom. What's that?

A. Yes, sir. Situational factors are what the Justice Department identify as being the events that converge together that result in the offense

[p.64]

or there are some instances where the person may be engaged in a long series of criminally violent behaviors, and there being violence or a homicide in this one is really something that could have happened all the way

along, the life style the person's involved in. There are other cases where there's a sense that but for these factors coming together at the same time, you wouldn't be here. And those are called situational factors; factors that come together. Reggie's presence may be a situational factor or who comes to the door may be a situational factor.

Q. Well, there were 26 risk factors?

A. Approximately.

Q. How many does Jonathan have?

A. Twenty-four.

Q. How would you characterize that?

A. Catastrophically cumulative.

Q. Are there any other additional factors for violence in the community in addition to those detailed by the Department of Justice, Dr. Cunningham?

A. Oh, yes, sir. One of the most powerful factors related to violence, aggression in the community, is being male and being youthful, being young.

[p.65]

Now, the Justice Department doesn't list that out as a separate factor because they are trying to look at what causes the violence, or adds to that likilihood among young -- late adolescent young adult males. They don't break that out separately, but this is its own very significant risk factor that can be demonstrated with a number of research studies.

Q. Can you provide some evidence of this relationship between youthfulness and violence?

A. Yes, sir. This is a -- this is a study that was published in 1990 that is called -- the fancy title of it is epidemiologic catchment area survey. That's a fancy way of saying they're -- etiological -- they are looking for the cause of violence, and so they go out into the community and they interviewed intensively 5,000 community residents, took all kinds of information from these -- these individuals. And this study is unique because it's not based on arrest records. They are asking people about their violence experience in the community. This is the percentage that are violent in any given year and this is the age of the individual. And so, for example, if you're a male between the ages of 18 and 29, you're not from the

* * *

[p.108]

begin to medicate himself with drugs and alcohol when he gets into a zone of having access to them.

Q. Can you describe the progression of Jonathan's alcohol and drug use?

A. Yes, sir, I can. He reported to me that at age eight, he was given Thunderbird wine and grape Kool-Aid by maternal half-uncle, Charles. This would be a child of his grandfather on that side of the family and Helen Harding, who was a subsequent relationship. He then described at that time that he got drunk and -- he drank so much that he got drunk and he passed out and he awakened to vomit.

Q. This was when he was how old again?

A. Eight years old. That also is a very ominous sign that the person, the first time they have anything to drink, they get very drunk until they pass out. That's an ominous sign about the affect that alcohol has on them and they're continuing to ingest it even after they are becoming intoxicated. He described that every, about weekly after that, he would go to uncle Charles' house with Reggie and they would all get drunk, that uncle Charles and Reggie would often have a girl there. Jonathan would drink until he passed out.

Q. Talking about his brother, Reggie?

[p.109]

A. That's correct. That after age eight on trips back to Cleveland when he would go back there, that he would again get drunk with his uncle Charles. He described that between ages 15 and 19, that when he was in Dodge city, during those years in Dodge City in high school, that he would get drunk all weekend. And then at age 19, he would get drunk every other weekend when Reggie visited, that that was a joint activity for them. In terms of marijuana, he described that he first smoked marijuana at about age 13 with Reggie. That in Dodge City, he would smoke blunts. These are cigar-like rolls of marijuana as opposed to joints, which are cigarette size. That they were smoking blunts every day, all day, that Jonathan and Reggie were. He described that he smoked one to two times monthly while Reggie was in prison. And then again, after Reggie's release from prison, when Reggie would visit, they would smoke marijuana heavily together.

Q. Self medication, that's a term that people hear these days sometimes. What does it mean?

A. Well, self medication means that, typically, that you have an adolescent, sometimes an adult, who is troubled by other emotional issues, and the

[p.110]

way they deal with that is to medicate themselves with drugs or alcohol.

Q. Do you think that has some application here to Jonathan, that term self medication?

A. Oh, yes, sir. There is very significant developmental abuse and neglect and disruptive relationships in his life that he would be carrying around a good deal of emotional pain as he came into adolescence and would be a prime candidate to begin to self medicate.

Q. You were talking about his use of marijuana.

A. Yes, sir. I described that as occurring at age 19 after Reggie's release from prison. They would smoke heavily when Reggie visited. He reported that in terms of the hallucinogenic mushrooms, that he used those routinely for about a month at age 18, and then stopped because he was getting delayed hallucinations. He was getting hallucinations that were occurring even well past when he had ingested the mushrooms.

In terms of PCP, which is typically smoked on a cigarette -- either a tobacco cigarette or a marijuana cigarette that is dipped in a fluid of PCP and typically embalming fluid and depending on where the person lives, they may call these sherms

[p.111]

or wet, and it's smoked. Jonathan told me two things about the PCP The first time I talked to him, he described that he had smoked wet at age 19, but that the last occurrence of that had been a number of months prior to this offense. What I -- I subsequently heard through defense counsel was that he was reporting to others that he was smoking PCP on the night of this offense. And so when I came back into town this morning, I asked him about that, and said, so, tell me -- you told me this before; tell me what your PCP use was. And he described that he had smoked PCP within 30 minutes or an hour of this offense. I -- I simply give you what I have heard. I don't know when he was smoking PCP and when he wasn't. There is some discrepancy in the two reports that he gave me.

Q. PCP -- what is that?

A. Phencyclidine, which is a -- was initially developed as an animal tranquilizer and was subsequently discovered to have some abuse potential. It -- it has a number of nervous system effects, promotes disruptive behavior, difficulty feeling pain, disruptive judgment, disruptive thought processes.

Q. Does that give you reason to believe that

* * *

[p.146]

STATE OF KANSAS)
) ss.
SEDGWICK COUNTY)

CERTIFICATE

I, Connie Uphaus, a Certified Shorthand Reporter for the State of Kansas, certify that I was present at and reported in machine shorthand the proceedings had in the case of State of Kansas v. Jonathan D. Carr, Case No. 00 CR 2979; and State of Kansas v. Reginald D. Carr, Junior, Case No. 00 CR 2978 before the Honorable Paul W. Clark, Judge of Division 9 of the District Court of Sedgwick County, Kansas, at Wichita, Kansas.

I further certify that the foregoing transcript of my shorthand notes is a true and accurate representation of all of the proceedings contained herein, to the best of my knowledge and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, this _____ day of _____, 2002.

_____
Connie Uphaus, CSR

CONNIE UPHAUS, CSR

IN THE EIGHTEENTH JUDICIAL DISTRICT DISTRICT COURT, SEDGWICK COUNTY, KANSAS CRIMINAL DEPARTMENT

Case No. 00 CR 2978
Case No. 00 CR 2979

[Dated November 12, 2002]

THE STATE OF KANSAS,	)
	)
Plaintiff,	)
	)
v.	)
	)
REGINALD D. CARR, JR.,	)
	)
Defendant.	)
	)
THE STATE OF KANSAS,	)
	)
Plaintiff,	)
	)
vs.	)
	)
JONATHAN D. CARR,	)
	)
Defendant.	)
	)

VOLUME 45B
TRANSCRIPT OF JURY TRIAL
NOVEMBER 12, 2002

Proceedings had before the Honorable Paul W. Clark, Judge of Division No. 9 of the District Court of

Sedgwick County, Kansas, in the Eighteenth Judicial District, at Wichita, Kansas, on the 12th day of November, 2002.

APPEARANCES:

Ms. Nola Foulston, District Attorney, Ms. Kim Parker and Mr. Kevin O'Connor, Assistant District Attorneys, Sedgwick County Courthouse, 535 N. Main, Wichita, Kansas 67203, appearing for the State of Kansas.

[p.2]

Mr. E. Jay Greeno, Attorney at Law, 250 N. Water, Suite 215, Wichita, Kansas 67202, and Mr. John V. Wachtel, IV, Klenda, Mitchell, Austerman & Zuercher, Attorneys at Law, 301 N. Main, Suite 1600, Wichita, Kansas, 67202, appearing for the defendant, Reginald D. Carr, Jr.

Mr. Ron Evans and Mr. Mark A. Manna, Attorneys at Law, Death Penalty Defense Unit, 112 S.W. 6th, Suite 311, Topeka, Kansas 66603, appearing for the defendant, Jonathan D. Carr.

CONNIE UPHAUS, CSR

[p.3]

INDEX

FOR DEFENDANT JONATHAN D. CARR:

MARK DOUGLAS CUNNINGHAM, Ph.D.

Direct examination by Mr. Evans (cont'd) 4

Cross-examination by Ms. Parker 44

Redirect examination by Mr. Evans 133

Recross examination by Ms. Parker 137

FOR DEFENDANT REGINALD CARR:

BARBARA PARKER

Direct examination by Mr. Greeno 142

CONNIE UPHAUS, CSR

* * *

[p.24] [*Cont. Direct Examination of Mark Douglas Cunningham, Ph.D. by Mr. Evans*]

participation in the physical abuse of each other. The next one is potential sexual abuse.

Q. Is sexual trauma limited to direct physical, genital contact?

A. No, sir, it's not.

Q. What other kinds of sexual exposures may be traumatic or injurious to a child?

A. Well, in some ways, this makes some common sense. You think about what is it that I don't want my little kids to be exposed to on a sexual channel that I think might be destructive to them. Well, one of those things is exposure to graphic sexual behavior, either to see videos, pornographic videos, to observe parental sexual activity, to see photographs of those things. A sexually perverse family atmosphere where there is too much sexual information that is being banded about like the allegations of infidelity or the sexual abuse of another child in the home.

Premature sexualization, that means that the child is becoming sexualized much sooner than they should, and so if they are interacting genitally, sexually, having intercourse at age seven, eight, nine, 10 instead of age 18, 19, 23, that's way out of phase. And that precocious, that

[p.25]

premature sexualization, ends up being damaging to development. There's observed sexual abuse or assault, seeing someone else mistreated sexually, and then there is direct physical, genital sexual abuse.

I have check marks beside the elements that Jonathan described were present in he and Reggie's life, and I've got question marks beside the ones that I'm uncertain of. For example, it's unclear regarding the observed sexual abuse or assault. There's no indication that Jonathan actually saw Temica being sexually abused or whether he was aware of that at the time. It's possible. In terms of the direct physical sexual abuse, Demetrius described that both of the boys separately came to her and told her that they were being sexually abused by one of mom's boyfriends or that the other one was being sexually abused. Jonathan came to her and said that Reggie was being sexually abused by one of mom's boyfriends. She described that Reggie came to her and told her that Jonathan was. But each boy denied that he was when she talked to them directly.

Q. This is information as per Demetrius?

A. That's correct.

[p.26]

Q. Specifically, what sexually traumatic experiences has Jonathan suffered?

A. Well, the allegations of marital infidelity between his parents that were recurrent source of conflict. Demetrius reported that men came in and out of the

house following Reginald's exit. Temica reported that her father had fondled her genitals and had tried to penetrate her. I described Reggie and Jonathan's independent report to Demetrius. Jonathan reported that he was -- when he was about six or seven, that Reggie prompted a peer-age girl named Amber to begin having sexual interactions with Jonathan. Apparently she had already been involved with Reggie. She was about the same age as they were, I think a year older than Jonathan, and Jonathan described that that involved both filacio and intercourse when he was seven years old. Now, it's my understanding that -- from Dr. Reidy that Amber has denied that these events ever took place. But Jonathan described that these were early sexual experiences that he had.

Then as a -- as a third grader, Jonathan was accused of raping this girl, this peer at a group rape at the Harvey Rice elementary school. He reported that his father subsequently withdrew

[p.27]

from him. His peers began to ridicule him and then he's sent off to live with Phyllis. Either way you cut it, this is a disastrous event in the sexual development of this young person. That one possibility is that he has already been sexualized into an assaultive pattern -- in an assaultive behavior at age nine which is -- cries out for vigorous exploration, investigation and treatment for this young person. Alternatively, he's been falsely accused of this, had this label put on him and has been expelled from his family, and so either -- whatever happens there, this is a disastrous event in the developmental trajectory of the sexuality.

Jonathan reported that while residing with aunt Phyllis in Brownsville, that he had intercourse a couple of times with a 19 year old female. At this point, he would have been 10, 11 years old. I don't have any confirmation of that. That's what he described. And then he also described that he had had exposure to explicit pornographic videos and photographs at around age 10 or 11, some of those involving material that an uncle, I think, had that they ended up having access to and some involving photographs and video

* * *

[p.36]

A. Yes, sir. Quite simply, if I might just direct to the bottom here. Quite simply, conclusion of the research is that a lack of parental discipline contributes to aggressiveness and predisposes to violence in the community.

Q. Now, back to the outline that you've been following about software. What sorts of values and models of behavior? Describe these models and values that Jonathan had growing up.

A. Well, there is parental neglect and parental irresponsibility and the behavior of his parents and the abandonment of his father. There is alcoholism or drug abuse by his mother, his father, his stepfather. Janis and Rick, according to Jonathan, maintained sporadic employment. There were varying -- Jonathan and Temica described, and Jennifer indicated that she had been told of this, as the kids were growing up, they described that Rick was involved in chopping down stolen cars and that he involved Jonathan and Reggie in this activity. After I had learned that from Temica,

I asked Jonathan about it. He indicated that had been the case. He had not told me that in the first interview, as I recall. I asked Jennifer about it or about Rick and she indicated that she

[p.37]

had heard this when she was growing up. Temica described that Rick would hide at his mother's house and later moved to Kansas to avoid law enforcement. Now, Janis denies this. Janis denies that Rick was ever involved in any illegal activity, so there's discrepancy in the family system about -- about this.

Jonathan believed that Rick was involved in selling and using drugs, but there is no other evidence of that. Jonathan described that Reggie was gang involved and dealing drugs from age 13 and that he looked up to Reggie. Jonathan also -- well, Temica described that Reggie would ridicule Jonathan as being weak, a wus, and other -- other disparaging adjectives about his lacking masculinity when he didn't do what Reggie wanted him to do. And then there were descriptions of Temica, Demetrius that Janis condoned the misconduct of the boys, that she didn't set limits on them.

Q. Okay. We discussed Jonathan's family background in some detail. I want to go back to the study you talked about earlier. This is the FBI Behavioral Science Unit which is -- was investigating the origins of sexual homicides.

[p.38]

A. That's correct.

Q. What did those FBI investigators discover about the family background of these offenders?

A. That there was inconsistent contact between family members, and poor attachment. That there was neglect, instability of home structure, father absence, unsatisfactory relationship with the father or the father figure. No constructive older sibling role model, particularly older role models of the same sex, feelings about mother that were very conflicted, family history that involves physical and psychological abuse, family sexual problems, sexual abuse and witnessing disturbing sex.

Q. Again, according to the FBI's researchers, these family problems aren't an abuse excuse or an attempt to blame someone else, are they?

A. No, sir. They are looking at what's their best understanding of some of the core causes that go into the development of an offender who could engage in this sort of sexually-driven violence.

Q. How many of these factors are present in Jonathan and Reggie's background?

A. Virtually all of them. The sexual abuse itself is potential, as I indicated, depending on whether

* * *

[p.41]

MS. PARKER: I object to the non-responsive nature.

THE COURT: I'll sustain the objection.

Q. Tie all this together. How does this relate -- the things that you talked about the last several hours, how does it relate to this offense?

MS. PARKER: Your Honor, I would object because if it's going to repeat what's already been said, it's repetitive.

THE COURT: It sounds like it's asking for evidence that is repetitious, cumulative.

Q. Do you have a way to tie this up that's not repetitious?

A. Yes, sir. I have a model that I've created.

THE COURT: I think I'll decide what is and is not repetitious. It sounds like it calls for repetition since we've heard it already.

Q. Has the jury seen the model?

A. No, sir.

Q. Does the model have information in it presented in a different way that might aid and assist them in some determinations they are going to have to make in this case?

A. I believe it would.

MS. EVANS: Ask that he be allowed to show

[p.42]

the model, Judge.

THE COURT: I'll allow it.

A. We have an individual with some very problematic genetic predispositions who, in addition to that, has neurological abnormalities that impact on them, and this person with these genetic predispositions and neurological abnormalities then grows up in a catastrophic family setting, and out of that comes substance abuse and disturbed adjustment that are aggravating each other during adolescence. Out of that, you have the influence of his older brother and intoxication at the time. And from that, you have the capital offense.

Q. As you interviewed Jonathan and you interviewed members of his family, did you find that Jonathan is just damaged and that's all there is to it?

A. No, sir, I did not.

Q. How could someone be damaged and have good things about them at the same time? The jury has heard the Culvers folks from Dodge City. They've heard Jessie Harris come in from Cleveland. They've said good things about Jonathan. You've described a damaged individual. How are those things consistent?

[p.43]

A. People aren't either all benevolent or all damaged. A psychiatrist that I worked with in the Navy said that people are like Swiss cheese. There is holes -- that's the way that any of us are selfish, destructive, violent, malignant to those around us. And then there's cheese, those are ways that we may be caring of others. And that all of us are some mixture of those two things. Jonathan has some extraordinary damage to him. There is some extraordinary holes that allow this kind of offense to occur. There is also cheese. They talk

about him -- his family members talk about being stunned at his participation in this, that they regard him as sensitive, affectionate, the one who is likely to hug and be considerate and think about them. There are people that he has apparently volunteered to assist in the aftermath of the flood, that he was out mopping floors, that -- that along with these horrific holes, that there have been and are good things about Jonathan as well. That's a more complicated way to look at people. It's easier to think about them being either all malevolent or all really fine all the way through, but that's not how people are and that's not who Jonathan is. And so it's more complex, but more

* * *

[p.142]

to go ahead and start with her tonight or quit at this time and come back in the morning?

MR. BRILEY: Go ahead.

THE COURT: Let's go on, then. We'll use these few minutes we have left. Mr. Greeno.

MR. GREENO: Thank you, Your Honor.

BARBARA HARDING,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. GREENO:

Q. Ma'am, could you please tell the jury your name?

A. I'm Barbara Harding.

Q. And Ms. Harding, you live in Dodge City; is that correct?

A. Yes.

Q. Are you related to Reginald Dexter Carr, Junior, and Jonathan Carr?

A. Yes.

Q. Can you tell the jury how that is?

A. I am their cousin.

Q. Ma'am, you need to sit up and lean forward a little bit.

A. I'm their cousin.

Q. Okay. Barbara -- or excuse me. Is Phyllis

[p.143]

Harding your mother?

A. Yes, she is.

Q. Okay. Do you know Reginald and Jonathan's mother?

A. Yes.

Q. Janis?

A. Yeah.

Q. How long have you known Janis?

A. All of my life.

Q. Okay. And do you know their sister, Temica?

A. Yes, I do.

Q. Have you spent any time in Janis' house as a child?

A. Yes, I have.

Q. Did you have occasion to be disciplined by Janis?

A. Yeah.

Q. Did she ever use physical violence on you to discipline you?

A. She spanked me.

Q. Okay. How did she spank you? Can you describe that for us?

A. With a belt. I mean --

Q. Okay. More specifically, did you ever see Reginald or Jonathan Carr disciplined that-a-way?

[p.144]

A. Not -- I mean, if we got in trouble, we got spanked. I mean, it's like -- how do you want to know? With what or how or --

Q. No. I just wanted to know if you had seen them be disciplined that-a-way?

A. If we got in trouble, we all got spanked at the same time, so it was just --

Q. Okay. And did that include Temica; is that correct?

A. No. Temica was a little bit older, so she -- I mean, I never really saw her get spanked.

Q. Could you scoot up, speak up a little bit?

A. I never saw Temica get spanked.

Q. Can you please tell us with some specifity, in some detail, how these spankings occurred?

A. Okay. We would just --

Q. What would she spank you with?

MS. FOULSTON: Your Honor, objection. No foundation -- time, date, place.

THE COURT: I'm going to overrule the objection. I take it that's where you are going, Mr. Greeno.

MR. GREENO: Yes, Your Honor.

Q. When these spankings occurred, where would you be at?

[p.145]

A. Our grandmother's house. I mean, I was -- okay. When I was little, if we got in trouble, normally we would be at my grandmother's house. I do remember one occasion being at my aunt's house a long time ago. I never got in trouble there, but as a child, normally, me and my cousins would be in my grandmother's house.

Q. Okay. You would be at your grandmother's house, but would Jonathan and Reginald's mother discipline you there?

A. Whoever was there, yeah. Her or my grandmother or my uncle. Whoever was the adult.

Q. Okay.

A. Around at that time.

Q. Specifically, I want to talk about the instances with Janis.

A. Okay.

Q. Okay. When Janis would discipline you at your grandmother's house, how old were you?

A. There are so many times that I was there. I mean, like, when -- kids are kids. They get caught doing things, you know, they get spanked for it at that time. I mean --

Q. What is the earliest age you can remember Janis Harding spanking?

[p.146]

A. Maybe five, four. I don't remember.

Q. What is the latest age you can remember her spanking?

A. Okay. I was, I think, 13.

Q. Okay. And would she -- did she use the same kind of punishment during that entire period of time?

A. No. I can tell you what it was for and why. I got spanked because my mother didn't want to do it because I was slacking off on my homework and she asked my aunt to do it, and I remember facing the wall and I got spanked with a belt.

Q. Were there ever any occasions when you were made to remove your clothes before you were spanked?

A. Yes. I remember having my pants pulled down and spanked.

Q. Okay. Were there ever any occasions when you were spanked where one of the -- either Reggie or Jonathan or Temica helped hold you down?

A. That was -- I mean, so our legs wouldn't move, so we wouldn't kick around, yeah. So we would stay still. We would get spanked like that.

Q. How frequently would these spankings occur?

A. Okay. I remember getting, like, doing

[p.147]

mischievous things every day, so I don't remember if I got spanked every day, but, I mean, I know I got spanked quite a few times when I was a child.

Q. What kind of objects would you be spanked with?

MS. FOULSTON: Your Honor, excuse me. I object as to the foundation as to who is doing the spanking, because we've had a number of different peoples' names.

THE COURT: I'll sustain as to foundation.

Q. We're going to talk about spankings from Janis Harding; is that okay?

A. Uh-huh.

Q. Is that a yes?

A. Yes, sir.

Q. You need to speak out loud because she's taking down --

A. Okay. Sorry.

Q. You need to speak out loud, because she's taking down every word you say and we can only speak one at a time.

A. Okay.

Q. Spankings with Janis Harding. Did she use some sort of implement to spank you with?

A. I -- belts, spoons,

Q. Okay. Anything else that you can think of?

[p.148]

A. Sometimes electrical cord.

Q. Did she ever leave marks?

A. Probably. I mean, I remember, like, trying to look at them, you know.

Q. Okay. Ms. Harding, did you ever have any physical altercations with Reginald -- Reginald Carr or Jonathan Carr when you were a child?

A. What do you mean?

MR. EVANS: Your Honor, I would object to any testimony elicited from her against Jonathan by Reginald.

THE COURT: I'll sustain the objection.

Q. Okay. Let's talk about Reginald. Did you have any physical problems, confrontations, fights with Reginald Carr?

A. Not really, no.

Q. Okay. Was there an occasion when you were living with your mother in California?

A. Yeah. There were a lot of things that went on in California.

Q. Okay. Well, let's talk about some of those. I know they are uncomfortable for you, but we're going to talk about them. You do recall living with your mother in California?

A. Yes, I do.

[p.149]

Q. Was any of your other family there?

A. There was Uncle Michael and my cousin, Temica.

Q. Okay. Was your grandmother there for a period of time?

A. Yes, and she was also there.

Q. Okay. Did anything happen between you and your uncle Michael when you were in California?

A. Yeah. He -- he molested me when I was a little kid.

Q. Excuse me?

A. He molested me.

Q. Okay. Did you report that to your mother?

A. No, I did not, because he was my uncle and I -- I was a little kid. I didn't know -- I was -- I didn't know what it was, you know. I just -- no, I did not.

Q. That's okay. Did anything happen between you and Temica when you were there?

A. I remember sometimes we would play and --

Q. Would you like a glass of water?

A. No. Well --

MS. FOULSTON: Your Honor --

A. Okay.

MS. FOULSTON: I object to the relevancy of Temica Harding and any engagement between the

[p.150]

two of them.

THE COURT: I don't see the relevancy of it, but I take it you're working toward a point that will lead to it.

MR. GREENO: Yes, Your Honor.

THE COURT: Go right ahead.

Q. Can you tell us about that just briefly?

MS. FOULSTON: Objection. There's no foundation.

THE COURT: I'll overrule the objection.

A. Just that when we were little, we played, and what it all boiled down to was that I performed oral sex on my cousin when I was six years old. I didn't know what I was doing. I wish that it never happened. I can't stand the fact that it happened. I hate myself for it that it happened. Every day I have to think about what happened to me; okay?

Q. I understand. We'll move on.

A. All right.

Q. Is there a point in time when you were back in Cleveland for periods of time with Reginald and Jonathan and Temica when you were a child? Is that a yes?

A. Yeah. That -- we lived -- yeah.

Q. Okay. I'm going to ask you flat out, were

[p.151]

there occasions when there was inappropriate sexual conduct between you and Reginald?

A. Yes, there was.

Q. And you and Jonathan?

A. With Jonathan, also.

MR. EVANS: Judge, object to that.

THE COURT: Same ruling.

Q. Okay. Let's just talk about Reginald, then; okay? At that point in time, were you having any problems with Temica?

A. No.

Q. Did you ever see any improper sexual conduct going on between Reginald and Temica?

A. No.

Q. Okay. When you -- how long did this go on with you and Reginald?

A. All the way up until Dodge City.

Q. And about how old were you at that point in time?

A. Twelve, 13.

Q. How old were you when it started?

A. Six or seven. I don't know. I was young when it started.

Q. Did you feel like you were doing anything inappropriate?

[p.152]

A. Well, when you've been doing it all your life, you don't really think about what you're doing until you're old enough to realize that it's wrong. And, yeah, after -- I mean, I was used to doing that, so, I mean, it was just my life. So until I got old enough to realize and finally it stopped. That's when I started thinking about all, you know, that's --

Q. Did it stop at your request?

A. It didn't stop at my request. It just finally stopped.

THE COURT: Let me interrupt you right there, Mr. Greeno. It's time we'll quit, members of the jury. Be in your jury room about 8:20 in the morning, and we'll continue on with this part of the case. Thank you very much for your attention today.

(end of proceedings for the day.)

[p.153]

STATE OF KANSAS)
) ss.
SEDGWICK COUNTY)

CERTIFICATE

I, Connie Uphaus, a Certified Shorthand Reporter for the State of Kansas, certify that I was present at and reported in machine shorthand the proceedings had in the case of State of Kansas v. Jonathan D. Carr, Case No. 00 CR 2979; and State of Kansas v. Reginald D. Carr, Junior, Case No. 00 CR 2978 before the Honorable Paul W. Clark, Judge of Division 9 of the District Court of Sedgwick County, Kansas, at Wichita, Kansas.

I further certify that the foregoing transcript of my shorthand notes is a true and accurate representation of all of the proceedings contained herein, to the best of my knowledge and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, this _____ day of _____, 2002.

_____
Connie Uphaus, CSR

CONNIE UPHAUS, CSR

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CRIMINAL DEPARTMENT

Case No. 00 CR 2978
Case No. 00 CR 2979

[Dated November 13, 2002]

THE STATE OF KANSAS,

Plaintiff,

vs.

REGINALD D. CARR, Jr.,

Defendant.

THE STATE OF KANSAS,

Plaintiff,

vs.

JONATHAN D. CARR,

Defendant.

VOLUME 46

TRANSCRIPT OF JURY TRIAL

November 13, 2002

APPEARANCES:

Ms. Nola Foulston, District Attorney, Ms. Kim Parker and Mr. Kevin O'Connor, Assistant District Attorneys, Sedgwick County Courthouse, 535 N. Main, Wichita, Kansas 67203.

Mr. E. Jay Greeno, Attorney at Law, 250 N. Water, Suite 215, Wichita, Kansas 67202, and Mr. John V. Wachtel, IV, Attorney at Law, Klenda, Mitchell, Austerman & Zuercher, 301 N. Main,

Connie Uphaus, C.S.R.

* * *

[p.3]

INDEX

DEENDANT REGINALD CARR'S WITNESS:

Barbara Harding (Continued)

Direct Examination by Mr. Greeno	5
Cross-Examination by Ms. Foulston	8
Redirect Examination by Mr. Greeno	23

State's Surrebuttal Witness:

Norman Pay

Direct Examination by Ms. Foulston	34
Cross-Examination by Mr. Greeno	73
Cross-Examination by Mr. Evans	82
Redirect Examination by Ms. Foulston	83
Recross-Examination by Mr. Greeno	87
Instructions Conference	98
Closing Argument by Ms. Foulston	128
Closing Argument by Mr. Greeno	145
Closing Argument by Mr. Evans	171
Closing Argument by Ms. Parker	182

EXHIBITS

STATE'S EXHIBITS	OFFERED	ADMITTED
Nos. 901, 902, 903, 904 906, 907, 908, 909, 910, 911, 912, 913 & 914	68	70

Reporters' Certificate 199

[p.4]

State's Surrebuttal Witness:

Norman Pay

Direct Examination by Ms. Foulston 34

Cross-Examination by Mr. Greeno 73

Cross-Examination by Mr. Evans 82

Redirect Examination by Ms. Foulston 83

Recross-Examination by Mr. Greeno 87

EXHIBITS

STATE'S EXHIBITS	OFFERED	ADMITTED
Nos. 901, 902, 903, 904 906, 907, 908, 909, 910, 911, 912, 913 & 914	68	70

Reporters' Certificate 199

* * *

[p.5] [*Cont. Direct Examination of Barbara Harding by Mr. Greeno*]

Q Good morning, Ms. Harding.

A Good morning.

Q We were visiting a little bit yesterday about some things that happened to you as a child; do you recall that?

A Yes, I do.

Q And I asked you some questions and some answers you gave us that weren't quite true; is that correct?

A Yes, sir.

Q When you were in California and the abuse occurred with your Uncle Michael, how old were you then?

A Six-years-old.

Q Did you report that abuse to your mother?

A When I was 15-years-old, I reported it to my mother and also at the time my grandmother was there. And they said that I was lying, so I kind of just, like, forget about it because I can't even get my mother and grandmother to believe me, so I just kind of like, whatever. I pushed it back inside of me and tried to forget about it again.

Q And during the time you were in California, some things happened with Temica; is that correct?

A Yeah.

Q Did Temica make you do those things?

A Yes, sir.

[p.6]

Q And did that end with Temica when you were in California?

A Yes, it did.

Q And some other time, was there a period of time when you had sexual contact with Reginald Carr and Jonathan Carr?

A Yes, sir.

MR. EVANS: Judge, object to any evidence elicited against Jonathan by Reginald.

THE COURT: I will sustain the objection.

Q Let's just talk about Reginald right now; okay?

A Uh-huh.

Q Is that a yes?

A Yes.

Q Did you have sexual contact with Reginald Carr?

A Yes.

Q Approximately how old were you at that point in time?

A When, after California?

Q Yeah.

A Seven.

Q When you had contact -- this contact with Reginald Carr?

A Seven.

Q Could you tell what the nature of that sexual contact was?

[p.7]

A Trying to make penetration but didn't work.

Q How frequently did that occur?

A Whenever we played some, like, maybe every day or whenever.

Q Do you know how old Reginald was when this happened?

A Maybe nine. He is two years older than me.

Q How long did this go on?

A In the day or night?

Q Did it go on for weeks or months or years?

A For awhile. For a few years.

Q And when did it finally quit?

A Well, with Reggie I was, I think, 13.

Q You were 13 when it quit?

A Because he was in high school and everything and, I guess, got beyond that, so --

Q How did it end?

A It just stopped.

Q It didn't stop at your request?

A I mean, it just didn't happen no more. I didn't say please stop. It just one day ended with Reggie.

Q This isn't something that's easy for you to talk about?

A No, it's not my favorite topic.

Q Has it affected your relationship with your family?

A Yeah.

[p.8]

MR. GREENO: I don't believe I have any further questions. Thank you.

THE COURT: Mr. Evans, any questions of Ms. Harding?

MR. EVANS: I have none.

THE COURT: Ms. Foulston, have you cross-examination?

MS. FOULSTON: Yes, Your Honor. Thank you.

CROSS-EXAMINATION

BY MS. FOULSTON:

Q Good morning, Ms. Harding.

A Good morning.

Q Can you please tell me your date of birth?

A [REDACTED], 1980.

Q And that would be the same year that Jonathan Carr was born; is that correct?

A Yeah.

Q So both you and Jonathan were the same age?

A Yeah, we. are the same age.

Q And you said that your cousin Reginald, he was born in 1977 so he would be three years older than you?

A Three, yeah, something like that.

Q And Temica?

A I don't know her birth date.

Q But she is older than Reggie?

* * *

[p.58] [*Cont. Direct Examination of Norman Pay by Ms. Foulston*]

Q Raise your hand, Dr. Flynn.

(Doctor Flyrin complies.)

Q And you also have conferred with Dr. Bart Grelinger, who is a neurologist in our community. Dr. Grelinger, please raise your hand.

(Doctor Grelinger complies.)

Q So each of these documents was reviewed, looked at, and discussed with regard to the findings that were apparent; is that right?

A Yes.

Q Now Dr. Preston said there was a marked reduction in FDG uptake in the medial aspect of both the right and left temporal lobes. What can you say about that finding?

A That is not true. There is normal uptake and there is normal metabolic function of both temporal lobes.

Q As applied to which defendant?

A Jonathan.

Q Now look at Reginald Carr's and turn over and get the number on the back of it. This one. And that would be State's Exhibit No. 910. Jonathan's, you referred to as 913. When you look at 910, can you tell me if there was a marked reduction in the FDG uptake in the medial aspect of both right and left temporal lobes?

A No.

[p.59]

Q He also says the temporal lobes are best seen in a temporal lobe orientation; is that correct?

A He doesn't have the temporal lobes in his scan.

Q Oh, that was my next question.

A Yeah.

Q Here is Exhibit A 39 and this is Reginald Carr's. You put it the right way because I can't do it. Which way?

A This way.

Q Okay, I am looking at it right. And then let's find Jonathan Carr's over here. So now we are going to look at JC No. 2 and A 39, and would that be the temporal lobe orientation?

A Yes. I would like to qualify because he zoned in on two structures, the uncus and amygdla. The uncus and amygdla are not in any of his cuts. They are part of the temporal lobes.

Q They are part of the temporal lobes. When you looked at these photographs, was there anything unusual about the coloration?

A Yes, it's a very odd coloration. We don't normally use this coloration to read our scans.

Q I am sorry, you use it for what?

A We don't usually use this coloration to read our scans.

[p.60]

Q Did you find that the color had been requested by Dr. Preston to be taken to a 20-percent background reduction?

A We found out later.

Q Just yesterday?

A Yes.

Q And then that was in consultation with Ms. Stratton?

A Yes.

Q And, in fact, Ms. Stratton had been with Dr. Preston when he had her do these prints?

A Correct.

Q So is this like -- can you mess with colors?

A Oh, yes; oh, yes.

Q And what affect does that have on those exhibits?

A Well, you can channel some colors out and can channel some colors in.

Q Now if I was going to compare -- I think I asked Dr. Preston, gosh, this one over here, is this normal, or roughly normal we ended up calling it, looked so much different. What's different?

A It's a different color scheme.

Q So is this misleading in what you are trying to prove?

A Yes. Let me just elaborate a little bit on the color scheme. This is a spectrum.

Q You can show the jury.

* * *

[p.64]

A The temporal lobe sits here in the back of the eyes, sits right here. Now in his scans -- well, we take our scans this way so that we see the temporal lobes, well, including the anterior temporal lobe. In one fashion or another he tilted it so much this way and that he took one cut like this, so that he missed the anterior portion of the temporal lobe, the uncus and

amygdla being the seat of the emotions is right here, and he completely missed it.

Q You came to learn that that was by design?

A We were told.

Q Now he says that now that we know -- let's go to the real ones, okay? I am going to ask you first to look at Jonathan Carr's information. Okay. Now, I am going to ask you if you can explain for us, if you will, the analysis interpretation based upon your expert vision, understanding and practice in neuroradiology and tell us about Jonathan Carr's brain?

A Looking at the scans, especially the coronal scan, there is normal metabolic function of both temporal lobes.

Q So what about this 40 to 50 percent decrease in uptake?

A There is no decrease.

[p.65]

Q What about the decreases of up to 15 to 20 percent -- I am sorry -- Dr. Preston said the decreases up to 15 to 20 percent could be considered within normal limits but he said that this was decreased function; is that incorrect?

A That's incorrect.

Q Now he also says that the medial temporal lobes are regions that has the amygdla and hippocampus and that's what you talked about?

A That is true.

Q In his view, and he explained the hippocampus is the region for recent memory and is required for learning?

A That is true.

Q The amygdla is a region that is involved with assigning risk or danger?

A True.

Q And the decrease in the uptake of those functions does not work as intensely as it might be expected when you have these decreased uptakes of FDG 40 to 50 percent?

A But he didn't have the amygdla here, so I don't think he could make the supposition.

Q In fact, if you were to look at all those pictures and you have conferred with other radiologists and other experts and is there a conclusion as to the function of Jonathan Carr's brain?

[p.66]

A You mean with his interpretation?

Q With this.

MR. EVANS: Objection to other folks' opinions beside Dr. Pay's, Your Honor.

THE COURT: I will overrule the objection.

Q You may answer.

A Could you repeat the question, please?

Q I guess I should, shouldn't I? When you reviewed this and as we talked about the number of individuals who called in to look, did you reach a consensus as to this brain being normal?

A Yes.

Q Do you have any quarrel?

A No.

Q Anybody have a problem with that?

A No.

Q Now looking at Reginald Carr's, if you would, Doctor. And again as I gave you this letter, again Dr. Preston says that there was a decrease -- a distinct decrease in FDG uptake of up to 40 to 50 percent and he showed this to be associated with decreased function. What can you tell us about Reginald Carr's brain from the documents you have here?

A There's normal metabolic function of both temporal lobes.

[p.67]

Q And is this again a consensus opinion?

A Yes.

Q And you concur?

A Yes.

Q Now, Doctor, does there appear to be anything wrong with the brain?

A No.

Q I mean, does it looks like he got hit over the head with a BB?

A I can't attest to the BB, but it looks like a normal brain.

Q So there's no damage there?

A Yeah.

Q And you can't tell us from this how his mind works, can you?

A No.

Q You can't tell us how he makes choices?

A No.

Q You are just interpreting the science of medicine as to the condition of the brains of Jonathan and Reginald Carr?

A True.

Q Doctor, these two men we know are brothers.

A Yes.

Q What can you tell me about the brains of these two in

[p.68]

the scans that you are looking at?

A If I didn't know they were brothers, I couldn't tell.

Q And do these resemble each other?

A They do.

Q Knowing that they are brothers, does that explain it?

A No.

Q It doesn't?

A No.

Q So every brain is different?

A Uh-huh.

Q Is that a yes?

A Yes.

Q And the interpretation, when done correctly, shows the brain of Jonathan Carr is normal?

A Yes.

Q And that interpretation, when done correctly, shows that the brain of Reginald Carr is also normal?

A Yes.

MS. FOULSTON: State moves for the introduction into evidence of nine -- I am sorry -- I thought I heard somebody say something. Exhibits 901, Reginald Carr, and that's the sagittal?

A Sagittal.

Q View; 902, Reginald Carr?

* * *

[p.98]

* * *

THE COURT: Hand these to her. I have the originals up here.

Are we are ready to talk about the Instructions to me? If so, how say you as to the forms of the verdict proposed and the

[p.99]

Instructions proposed?

MS. PARKER: Your Honor, as to the verdict forms both as to defendants Reginald D. Carr, Jr. and Jonathan D. Carr, these issues have been discussed before. The State has no discussion to the verdict form. They are in compliance with the Supreme Court's definition in the Kleypas -- the first decision, the Kleypas Case -- the first decision to come out in the State of Kansas since the enactment of the death penalty law. Do you want me to proceed through the Instructions one at a time?

THE COURT: Only if you have something to say about each one of them.

MS. PARKER: The State has no objection to the Instructions in their entirety, 1 through 11 or 1 through, yes, 11.

THE COURT: There are 11, I believe.

MS. PARKER: Yes.

THE COURT: Mr. Greeno, are you ready to speak to those?

MR. GREENO: Yes, I am Your Honor.

As to Instruction No. 5, I would object to Instruction No. 5, specifically Paragraphs 2 and 3, as they are not supported by the evidence in

[p.100]

this particular case. There is no evidence that indicates that these murders occurred for the purpose of receiving money or anything of monetary value. Nor is there any evidence that Reginald D. Carr, Jr. committed the crime in order to avoid or prevent a lawful arrest or prosecution. Nos. 1 and 4 are fact questions for the jury to decide but that would be my objection to Instruction No. 5.

The second page of Instruction No. 5 talks about what is especially heinous, atrocious, cruel. I know that's been previously approved. I don't like it and I am going to object to it.

I am going to object to Instruction No. 10, as I said previously, although it may not have been on the record. The language that's used in the first paragraph, although has met with the approval of the Court, I still feel that it is in the line of a mandatory death sentence or mandatory death penalty which I think the United States Supreme Court prohibits but I have knowledge that they reviewed this instruction and found it will pass muster.

I would object to Verdict Form No. 1 as to Reginald Dexter Carr for the reasons I stated in

[p.101]

objecting to the previous section that talks about the aggravating circumstances.

THE COURT: That would be as you can see in each count.

MR. GREENO: As it pertains to Reginald Dexter Carr and as it pertains to each count of capital murder. I would also request the Court include pattern instruction for Kansas Third Criminal 52.13, which is defendant's failure to testify. I think it applies in this particular case as well or in this phase of the proceedings as well since Mr. Carr did not testify.

And I would ask also ask the Court Pattern Section under Kansas Third, No. 102.50, which is from the Civil Pattern Instructions of Kansas, but discusses expert witnesses. We had a lot of expert witnesses testify in this particular case. We had rebuttal expert witnesses testify. I have reviewed this Instruction and it seems to kind of pertain to what we have got going on here, how they are supposed to consider expert witnesses. I know that the Pattern Instructions for Kansas Criminal does not recommend an Instruction for expert witnesses, but I don't know why one would count for civil and not for criminal. So it

[p.102]

would be my request to add that and I will have reduced it to writing and submit it to the Court for the record.

THE COURT: Thank you. Mr. Evans.

MR. EVANS: Judge, if I could take just a minute to read the expert witness thing, what he is proposing, to see if I want to join it.

I would join in requesting the expert witness instruction. I would not join in requesting the defendant's failure to testify instruction. I don't think that applies to this stage and I would object to it being given. We filed written requests several weeks ago and we gave you a copy.

THE COURT: Yes.

MR. EVANS: As they are different from the Instruction you are giving, we would note our objections and we would make them in that form as to the written jury instruction we gave you. We would join Reginald Carr's other objections to the Instructions and to the verdict form.

* * *

[p.111]

please.

(After the jury had returned to their seats in the jury box, the following proceedings continued with both defendants present:)

THE COURT: Members of the jury, we are ready for the Instructions of the Law. Let me go over again the cell phone rule you already know. You will be given again the list of witnesses, the Exhibit List for the Plaintiff, State of Kansas, and the defendant Reginald Carr contained here, the one exhibit for Mr. Jonathan Carr is here. On the PowerPoint presentations that were presented during the guilt phase, what I will do, Mr. Presiding Juror, is leave those in the back. Anybody wants to look at them, we will bring out the computer and set it up. Set up in the courtroom so you all can use it, just like you did during the deliberations of your guilt phase. So pass us a note if you want to see the PowerPoints and we will set up a computer and you will be free to run those any way you want to run them.

Again, on your instructions on the sentencing phase. If I mispronounce a word or leave out a word, you are to go by the printed

[p.112]

word. Don't be confused if I mispronounce or do anything to the word other than what's printed. That is your guide. That book is yours. Put your name on it, you can highlight, write in it or do anything you want to with it. Pick that book up, please, we are going to read them. I will read again. Don't get ahead of me. If you get behind me, indicate in some way you want me to slow up, and I will. As you know, our focus here is on the first four counts, those are the capital murder counts.

It is the responsibility of the jury to decide the proper sentence for the individual defendants in those four counts. We are not in that book yet if you are looking for where I am at, we are not there yet. It is my responsibility to decide on the proper sentence for the individual defendant on all other counts in which you returned a verdict of guilty.

Now to the book of the Jury Instructions Sentencing Phase. Go to the tab marked Instructions, please. That first page is again the cover page that tells you the name of the Court in which the case is filed, the parties to the lawsuit, and what the booklet is, Jury

[p.113]

Instructions - Sentencing Phase. The next page lists the lawyers for the parties. And go to your next page. You should have Instruction No. 1.

Instruction No. 1. The laws of Kansas provide that a separate sentencing proceeding shall be conducted when a defendant has been found guilty of capital murder to determine whether the defendant shall be sentenced to death. At the hearing, the trial jury shall consider aggravating or mitigating circumstances relevant to the question of the sentence. It is my duty to instruct you in the law that applies to this sentencing proceeding and it is your duty to consider and follow all of the instructions. You must decide the question of the sentence by applying these instructions to the facts as you find them.

Instruction No. 2. In your determination of sentence, you should consider and weigh everything

admitted into evidence during the guilt phase or the penalty phase of this trial that bears on either an aggravating or a mitigating circumstance. This includes testimony of witnesses, admissions or stipulations of

[p.114]

parties and any admitted exhibits. You must disregard any testimony or exhibit which I did not admit into evidence.

At times during the trial I have ruled upon the admissibility of evidence. You must not concern yourself with the reasons for these rulings. I have not meant to indicate any opinion as to what your verdict should be by any ruling that I have made or anything that I have said or done.

Statements, arguments, and remarks of counsel are intended to help you in understanding the evidence and in applying the law to the evidence. If any statements or arguments or remarks are made that are not supported by evidence, they should be disregarded. If any statements are made regarding the law of the case that are not set out in these Instructions of Law, such statement should be disregarded.

It is for you to determine the weight and credit to be given the testimony of each witness. You have a right to use common knowledge and experience in regard to the matter about which a witness has testified.

Instruction No. 3. You must give separate

[p.115]

consideration to each defendant. Each is entitled to have his sentence decided on the evidence and law which is applicable to him. Any evidence in this phase that was limited to only one defendant should not be considered by you as to the other defendant.

Instruction No. 4. The State has the burden to prove beyond a reasonable doubt that there are one or more aggravating circumstances and that they outweigh mitigating circumstances found to exist. In making the determination whether aggravating circumstances exist that outweigh mitigating circumstances found to exist, you should keep in mind that your decision should not be determined by the number of aggravating or mitigating circumstances that are shown to exist.

Instruction No. 5. Reginald D. Carr, Jr., Aggravating Circumstances. Aggravating circumstances are those which increase the guilt or enormity of the crime or add to its injurious consequences, but which are above or beyond the elements of the crime itself. As pertains to the defendant Reginald D. Carr, Jr. the plaintiff, State of Kansas, contends that the following aggravating circumstances are shown from the

[p.116]

evidence.

(1). That the defendant Reginald D. Carr, Jr. knowingly or purposely killed or created a great risk of death to more than one person; and/or

(2). That the defendant Reginald D. Carr, Jr., committed the crime for the defendant's self or another for the purpose of receiving money or any other thing of monetary value; and/or

(3). That the defendant Reginald D. Carr, Jr. committed the crime in order to avoid or prevent a lawful arrest or prosecution; and/or

(4). That the defendant Reginald D. Carr, Jr. committed the crime in an especially heinous, atrocious or cruel manner.

(A) Heinous means extremely wicked or shockingly evil.

(B) Atrocious means outrageously wicked and vial.

(C) Cruel means pitiless or designed to inflict a high degree of pain; utter indifference to, or enjoyment of the suffering of others.

Instruction 5, Continued. A crime is committed in an especially heinous, atrocious or cruel manner where the perpetrator inflicts

[p.117]

serious mental anguish or serious physical abuse before the victim's death. Mental anguish includes a victim's uncertainty as to his or her ultimate fate.

In your determination of sentence, you may consider only those aggravating circumstances set forth in this instruction.

Instruction No. 6. Reginald D. Carr, Jr., Mitigating Circumstances. Mitigating

circumstances are those which in fairness may be considered as extenuating or reducing the degree of moral culpability or blame for which justify a sentence of less than death even though they do not justify or excuse the offense.

In this proceeding, you may consider sympathy for a defendant. The appropriateness of exercising mercy can itself be a mitigating factor in determining whether the State has proved beyond a reasonable doubt that the death penalty should be imposed.

The determination of what are mitigating circumstances is for you as jurors to decide under the facts and circumstances of the case. Mitigating circumstances are to be determined by each individual juror when deciding whether the

[p.118]

State has proved beyond a reasonable doubt that the death penalty should be imposed. The same mitigating circumstances do not need to be found by all members of the jury in order to be considered by an individual juror in arriving at his or her sentencing decision.

Our State Legislature has provided that mitigating circumstances include, but are not limited to, the following.

(1). The defendant has no significant history of prior criminal activity; and/or

(2). The crime committed -- the crime was committed while the defendant was under the

influence of extreme mental or emotional disturbance; and/or

(3). The defendant was an accomplice in the crime committed by another person. And the defendant's participation was relatively minor; and/or

Instruction No. 6, Continued,

(4). The defendant acted under extreme distress or under the substantial domination of another person; and/or

(5). A term of imprisonment is sufficient to defend and protect the people's safety from

[p.119]

the defendant; and/or

(6). The age of the defendant at the time of the crime.

You may further consider as a mitigating circumstance any other factor which you find may serve as a basis for imposing a sentence of less than death. Each of you must consider every mitigating circumstance found to exist.

Instruction No. 7. Jonathan D. Carr, Aggravating Circumstances.

Aggravating circumstances are those which increase the guilt or enormity of the crime or add to its injurious consequences, but which are above and beyond the elements of the crime itself.

As pertains to defendant Jonathan D. Carr, the Plaintiff, State of Kansas, contends that the following aggravating circumstances are shown from the elements.

(1). That the defendant Jonathan D. Carr knowingly or purposely killed or created a great risk of death to more than one person; and/or

(2). That the defendant Jonathan D. Carr committed a crime for the defendant's self or another for the purpose of receiving money or any

[p.120]

other thing of monetary value; and/or

(3). That the defendant Jonathan D. Carr committed the crime in order to avoid or prevent a lawful arrest or prosecution; and/or

(4). That the defendant Jonathan D. Carr committed the crime in an especially heinous, atrocious or cruel manner.

(A). Heinous means extremely wicked or shockingly evil.

(B). Atrocious means outrageously wicked and vial.

(C). Cruel means pitiless or designed to inflict a high degree of pain; utter indifference to, or enjoyment of the suffering of others.

Instruction No. 7, Continued.

A crime is committed in an especially heinous, atrocious or cruel manner where the perpetrator

inflicts serious mental anguish or serious physical abuse before the victim's death. Mental anguish includes a victim's uncertainty as to his or her ultimate fate. In your determination of sentence, you may consider only those aggravating circumstances set forth in this instruction.

Instruction No. 8, Jonathan D. Carr,

[p.121]

Mitigating Circumstances. Mitigating circumstances are those which in fairness may be considered as extenuating or reducing the degree of moral culpability or blame or which justify a sentence of less than death, even though they do not justify or excuse the offense.

In this proceeding, you may consider sympathy for the defendant. The appropriateness of exercising mercy can itself be a mitigating factor in determining whether the State has proved beyond a reasonable doubt that the death penalty should be imposed.

The determination of what are mitigating circumstances is for you as jurors to decide under the facts and circumstances of the case. The mitigating circumstances are to be determined by each individual juror when deciding whether the State has proved beyond a reasonable doubt that the death penalty should be imposed. The same mitigating circumstances do not need to be found by all members of the jury in order to be considered by an individual juror in arriving at his or her sentencing decision.

Our State Legislature has provided that mitigating circumstances include, but are not

[p.122]

limited to, the following.

(1). The defendant has no significant history of prior criminal activity; and/or

(2). The crime was committed while the defendant was under the influence of extreme mental or emotional disturbance; and/or

(3). The defendant was an accomplice in the crime committed by another person and the defendant's participation was relatively minor; and/or

Instruction No. 8, Continued.

(4). The defendant acted under extreme distress or under the substantial domination of another person; and/or

(5). A term of imprisonment is sufficient to defend and protect the people's safety from the defendant; and/or

(6). The age of the defendant at the time of the crime.

You may further consider as a mitigating circumstance any other factor which you find may serve as a basis for imposing a sentence of less than death. Each of you must consider every mitigating circumstance found to exist.

Instruction No. 9. At the conclusion of

[p.123]

your deliberations, you shall sign the verdict form upon which you agree. You have been provided verdict forms which provide for three alternative verdicts in each of the four counts of capital murder. These are labeled as follows: Verdict Form (1), Verdict Form (2), Verdict Form (3).

Instruction No. 10. When considering an individual defendant, if you find unanimously beyond a reasonable doubt that there are one or more aggravating circumstances and that they outweigh mitigating circumstances found to exist, then you shall impose a sentence of death. If you sentence the particular defendant to death, you must designate upon the appropriate verdict form with particularity the aggravating circumstances which you unanimously find beyond a reasonable doubt. That is Verdict Form (1).

Now, just pick up that tab Verdict Reginald D. Carr, Jr., and the first page is the verdict and the second lists the lawyers. Then see Verdict Form (1). Everybody have that?

Count 1, Capital Murder, Heather Muller. We, the jury, being duly sworn upon our oath make the following findings concerning the sentence

[p.124]

for the defendant Reginald D. Carr, Jr. As to Count 1, capital murder of Heather Muller. We find unanimously beyond a reasonable doubt that the following aggravating circumstances have been

shown to exist. Please indicate by X in the blank space.

(1). That the defendant knowingly or purposely killed or created a great risk of death to more than one person.

(2). That the defendant committed the crime for the defendant's self or another for the purpose of receiving money or any other thing of monetary value.

(3). That the defendant committed the crime in order to avoid or prevent a lawful arrest or prosecution.

(4). That the defendant committed the crime in an especially heinous, atrocious or cruel manner.

We find unanimously beyond a reasonable doubt that the aggravating circumstances found to exist outweigh the mitigating circumstances found to exist.

As to Count 1, capital murder of Heather Muller, we find the proper sentence for Reginald

[p.125]

D. Carr, Jr. is death. Then signature line for your presiding juror and the date.

Now, turn back to verdict -- or the Instruction No. 10, the second paragraph. If you find that the evidence does not prove any of the claimed aggravating circumstances beyond a reasonable doubt, your presiding juror should mark the appropriate verdict form. That is Verdict Form (2).

The Court will fix a proper sentence for the particular defendant. Turn back then to Verdict Form (2) under that tab.

Count 1, capital murder of Heather Muller on Verdict Form (2). As to Count 1 Capital Murder of Heather Muller, we the jury being duly sworn upon our oath, find that the aggravating circumstances claimed by the plaintiff, State of Kansas, have not been proved to exist beyond a reasonable doubt. And a line for your date, signature line for your presiding juror.

Back to Instruction No. 10, please, The third paragraph. If one or more juror is not persuaded beyond a reasonable doubt that aggravating circumstances exist or that those found to exist do not outweigh mitigating circumstances, then you should sign the

[p.126]

appropriate alternative verdict form indicating the jury is unable to reach a unanimous verdict sentencing the defendant to death. That is Verdict Form (3). In that event, the Court will fix the proper sentence for the particular defendant.

Turn back to Verdict Form (3). Verdict Form (3) under the tab, Verdict Reginald D. Carr, Jr., Count 1, capital murder, Heather Muller.

As to Count 1, capital murder of Heather Muller, we the jury being duly sworn, upon our oath, state that we are unable to reach a unanimous verdict sentencing the defendant Reginald D. Carr, Jr., to death. Please indicate by X in the blank space

(A) we are not able to agree unanimously that the evidence proves an aggravating circumstance exists.

(B) We are not able to agree that the aggravating circumstances that were proved to exist outweighs the mitigating circumstance shown to exist by the evidence. Then again a date line for your verdict and a signature line for your presiding juror.

Back to Instruction No. 10, please. Be on

[p.127]

the fourth paragraph that starts as concerns the counts; everybody have that? As concerns the counts other than the first four capital murder, the law gives the Court the responsibility to fix a proper sentence for each defendant.

Should the responsibility to fix a proper sentence in all counts -- to include the first four, capital murder, fall to me, you are instructed that the total sentence would be such that the individual defendant would not be eligible to appear before the parole board for a certain period of time. The period would be a minimum of 50 years and a maximum of 268 years. It is for the Court to decide.

Now in each count there will be a Verdict Form 1, 2, and 3, and I think everybody understands that.

Instruction 11. Your presiding juror will continue to reside over your deliberations in this proceeding. That person will speak for the jury in Court and will sign the verdict upon which you

agree. Your verdict must be founded entirely upon the evidence presented and the law as given to you in these instructions. Your agreement upon a verdict sentencing a defendant

[p.128]

to death must be unanimous. And write in, if you would please, today's date which is November 13, 2002. The original of your verdict forms will be in these covers. There's one for Reginald D. Carr, Jr., and one for Jonathan D. Carr. You will have those with you.

The next part, members of the jury, is closing arguments. You will recall the purpose of closing argument is to give the lawyers for the parties an opportunity to suggest to you, the jury, what your findings ought to be in this case.

Mrs. Foulston, you will make first.

MS. FOULSTON: Thank you, Your Honor.

THE COURT: Ms. Nola Foulston for the plaintiff, State of Kansas.

MS. FOULSTON: May it please the Court, counsel, ladies and gentlemen of the jury. There has not been a stone that's been left unturned. There has not been a piece of evidence that at one time or another that you have not looked at. There has not been any lack of information presented nor has there been any suggestion of lack of interest on the part of this jury. You completed the first phase, the guilt phase, with

[p.129]

the determination as to the culpability of the individual defendants, Jonathan Carr and Reginald Carr. That determination has been made.

And we pass, then, to the sentencing phase, that which we are talking about here. where there is a chance for the defendants to present information to you as a jury in some way to respond to the question of whether or not the death penalty is appropriate, to mitigate, to lessen, to look at them in a different light. And I believe that the evidence has been quite a bit of evidence that has been presented by the defendants. We have had a lot of laundry, dirty and clean, in this courtroom. We have had a lot of information that you as jurors have the ability to sort through and make some determinations. We have had medical testimony, psychological testimony, neighbor testimony. And I want to talk to you about this phase and what its meaning is.

When we talked to each and every one of you jurors at the very beginning of this process, we were very clear to point to you and say it is the burden that is placed upon the State of Kansas to prove what we say happened. And, again, the

[p.130]

burden is on the State to prove that the aggravating factors must outweigh the mitigators in order for the death penalty to be imposed. And that is not something that, the obligation, that you have taken lightly in the first phase nor is it expected that you would do anything but to research and to analyze and to distribute the information and to weigh it

and measure it and turn it upside down and look at it backwards, and to have a healthy discussion about the relative merits of that which you have heard in the courtroom. The State has many, many days of evidence that went towards the proof of the aggravating factors in this case.

If you recall at the conclusion of the case after the jury's verdict came out, what our position was, was to adopt all of those days of testimony, everything you heard in that Court, and give it to you in this phase saying that the body of the crime, that information should be and can be reconsidered in these aggravating factors, as they would apply to the capital death of Jason Befort and Aaron Sander, Brad Heyka, and Heather Muller. The State has given you those aggravating factors that by law has been set down

[p.131]

and applied to this particular case.

So let's look at them in Instruction No. 5. When we talk about aggravating, we use the term very much in our daily lives. Turn the TV off, it is aggravating me, heightening your awareness. Don't do that, it aggravates me. Don't pick at it, it will aggravate the wound. In a legal sense, the Court explained that aggravating circumstances are those that increase the guilt or the enormity of the crime or add to its injurious consequences but which are above and beyond the crime itself. And you know that the crime of capital murder has been found.

Now you look at the circumstances that would enhance those crimes from the perspective of a

rationale, thinking jury to say, you know, these aggravators make that crime even worse. And that is what an aggravator is. So we point specifically, we point to each defendant, two defendants, two brothers, two culprits, two criminals, two individuals all found to be culpable of capital murders of four people.

We say what is it that enhances the nature of the crime? The first one that the law states is that they knowingly or purposefully killed or

[p.132]

created a great risk of death to more than one person. We know from all of the facts and all of the information that these were five killings that were experienced. Only one survivor but five killings, and throughout the course of the terror of that night of December 14th into the early morning hours of the 15th, the terror and risks of harm was always there. Yes, there was a risk of harm to all of them, everyone in that field, but the capital murder of only four.

The State has also alleged, and the wealth of evidence cannot be undercut by any means, that these crimes were committed by Reginald and Jonathan Carr for the purpose of self, for the purpose of obtaining things of value, a television set, money, ring, golf clubs, clothing. All the items you see in this courtroom. All of these things for the purpose of self. This smacks of greed. It smacks of self purpose. It almost hits you over the head with what these individuals were thinking and doing in enhancing their crime by collecting these things

that mean nothing. Mean nothing today. But to them it meant everything. And it meant the killing of four people to get these

[p.133]

material benefits.

And, you know, if you imagine and you ask yourself a question, and I don't know the answer, why did they have to kill them? Well, why didn't they just kind of tape them up or lock them in the house or why didn't they just kind of drive them out to that field like they said they were going to do, just drop them off naked, and be able to go back to the house and clean it out and then leave. Because there was a plan to leave no witnesses behind. To leave no traces in the snow except for blood. To leave no footsteps. To leave no fingerprints by using Windex. To leave no evidence of their being there by using gloves, dimming the lights, not wanting to be seen. Because if they were seen, these individuals had the ability to let law enforcement officers know what had happened.

And it was not in Jonathan and Reginald Carr's best interest to leave individuals alive to tell the story that might cause them to have responsibility for the already heinous and atrocious acts that they had committed before the killings. There were 23 sexual assaults. There were kidnaps, humiliation, beaten with golf

[p.134]

clubs. And, you know, ladies and gentlemen, we made the conscious decision not to show you again

the photo of the scene of the events at 29th and Greenwich because it's etched there. Individuals there are frozen in time. They are not mannequins in that snow. Those are people, living, human, breathing individuals. And that crime made their lives end in the most gruesome and vial way. It made their lives end after degrading them to the extent that no human being should suffer what they suffered or have been humiliated as they were humiliated.

I think that you need to consider that at 29th and Greenwich Road we are concerned with the death of those four young people. I don't like to call them victims. It's not personal. Those are people. It was Jason. It was Heather. And, oh yeah, it was Brad, and it was Aaron. And that's how their family knew them. They didn't grow up with a target on their head saying victim. They weren't buried with a tombstone that said victim. But those individuals were in a position where they were being punished.

And the question is what mitigates punishment? Something for the jury to decide.

[p.135]

What is it that should lessen or alleviate or diminish or decrease the responsibility of Jonathan and Reginald Carr for the punishment that fits this crime that's set forth by the laws of the State of Kansas. This isn't something that was made up yesterday. This is the law. And when you think about mitigation, think about mitigation of the execution of Heather and Aaron and Brad and Jason. Think about no PowerPoints in that field.

There were no psychologists debating the issues. There weren't any brain scans that were done before they were executed. Judge Clark wasn't there. No prosecutors. No defense. There wasn't any witness chair that was set up in the snow where family members of Brad and Jason, and Aaron and Heather could come and say, Show mercy to my child. She has led a good and exemplary life. There was no person from the Befort family to say, Please, spare this punishment, show mercy. There wasn't any witness called for Aaron Sander. There wasn't any witness called for Brad or Aaron or Heather. There was no consideration of mitigation for the execution, their punishment that occurred on that field. And there wasn't any play-by-play

[p.136]

analysis. And the only reason that we know what we know today is because there was one survivor, certainly not by plan or design of Reginald Carr or Jonathan Carr.

When you look back at one's life as you grow older, you think of the joys of youth and your childhood and some of you may have recollections of not so great days. You may have recollections of walking with your parents in the park like Janis Harding, like Barbara Harding and her mother Phyllis. You might have also some bad memories of your parents. You might blame your parents for all the bad things that happen to you today. I think Mr. Evans said it best that Janis Harding is not June Cleaver. And these defendants are not the Cleaver boys.

How do we know that? You know, I want to show you a photograph and it's a cute photograph. It's a cute photograph of Jonathan and Reginald, Exhibit A 8. And it shows two young boys with smiles on their faces, healthy-looking, happy, well-clothed and enjoying the photo session. These kids are gone. They don't exist anymore. These children have grown up to adults that didn't just lose their moral compass, ladies and

[p.137]

gentlemen, they threw it away. They pitched it. These are individuals who lead and led their lives with the reckless disregard for the rights of others. Who committed crimes that were heinous and atrocious and cruel and vial, and there aren't enough words to describe what they did to Jason and Aaron and Heather and Brad. There just aren't enough words. There's pictures and there's memories but there are not enough words to describe how vial and despicable what these two individuals did to those young people in that field.

Human beings are responsible for their acts. You know that is really, truly what separates us from primates. The ability to reason, the ability to think. The power of free will. The power of choice. To choose what you want to do. To make those decisions and to act upon them. And these individuals, too, were endowed with reason. These two, Jonathan and Reginald, by various descriptions were endowed with intelligence. These two individuals came from a family where some of their members of the family all from major lineal

line, all sharing DNA, all from the scientific issues, these two

[p.138]

individuals came from a family where some people worked for a living. Like their Mom. And it's a tragedy, a tragedy that she tried to make them responsible by making them eat vegetables. That's a tragedy. So we have to hear about this today, to mitigate the punishment in this case. That the death penalty should not be imposed, Ladies and Gentlemen of the jury, the defendants had to eat broccoli. It doesn't work. These defendants had free choice and free will.

And I will tell you what, they had more than that. They have normal brains. Ah, the normal brain, the PET scan. If you remember Dr. Preston came in and said, Oh, there's some problems here. We got problems in River City and it is problems with the brains of these young people because looky here, that A 40, this is a normal brain. Ladies and gentlemen, hold it the right way. And would you look at this? This is the brain of Jonathan Carr. Can you see the difference there? Oh, and this one, this is the brain of Reginald Carr. Can you see the difference? Can you see where the center of their brain has been destroyed or 40 percent decreased? Can you see that?

[p.139]

Yeah, these colored picture are pretty slick. They are. They are really slick. Better than those old X-ray kinds of things, you know, just black and white. But, you know, it all depends on who is looking and

it all depends on what they are doing with these documents, these digital pictures. There's no doubt these two guys had PET scans. And they presented them to you as abnormal. The foundation of their lack of culpability. We are not responsible or we should be given mercy and sympathy because, golly gee whillikers, look at the miserable childhood that we had. And look at our brain because our brains support that I got hit with a BB, or I got hit with the trash can and it may still be there, oh, look at it.

But when the truth comes out and the doctors come and say well, you know, these aren't right. In fact the statement was it was wrong to show you these. Because these show nothing. The hocus pocus of all of this was not right. It was manipulated. The color background. The slice of where it came from. The coloration from one to the other. You know Dr. Preston said, Yeah, that's a different

[p.140]

machine. There was nowhere in there when I actually sliced it in a different angle so you wouldn't see all the pretty colors you see here because then they would look like they were okay and that one was okay. He didn't say that. But the doctors who practice and concur, radiologists, neuroradiologist, technician and PET scan chief for MR Imaging where they were taken, they weren't allowed to look at them back then. Looked at them yesterday. It's wrong. What is your colleagues' conclusion? These are normal brains.

So what does that do? What does that do to the foundation of this sympathy and abuse excuse and

blame? Where does that put that? It puts the foundation as if the foundation had totally disappeared and the house comes crashing down. Because there is no abnormal brain. It is a normal one. And you can't link -- you can't link all the rest of these things to this, how tortured and how terrible it is. And, Ladies and Gentlemen of the Jury, when you are disabled, you want to think of yourself as capable, not disabled. When you think of yourself as someone who is truly, truly emotionally disturbed, they

[p.141]

don't want sympathy. They want to be understood for what they are trying to do. Whether it was Michael Harding who seemed to be emotionally disturbed, truly lacking the faculty to make life work for him. And it is shameful to try and throw yourself in a category of individuals who are emotionally disturbed and in some way less because of this sham. And to rely on this to say excuse me, please, I have an abnormal brain and therefore, I had a lousy childhood.

And when you put that all together, that information should lead you to give me mercy because, you knpw, we deserve it. Disabled people do not want sympathy. They just want to be appreciated .for their abilities. And I certainly ask you to reflect on the abilities of these two gentlemen here. These two individuals, their acts. These were kids who drug their laundry here in Court. Put their mother on the witness stand, criticized her. Gave her despicable commentary. Got into her private possessions. Talked about seeing naked

pictures of her. Maybe they weren't meant for Reginald Carr's eyes. But you can't continue to blame your parents for things that go wrong in your

[p.142]

life. Around the population of the United States, people get divorced every single day. We try very hard to feed our kids vegetables because they are good for them. I am sure a lot of kids are holding their nose and eating broccoli but they don't turn out to be individuals who commit capital murder. Children are disciplined. All right, some people might not agree with every form of discipline. In fact, you heard Dr. Phyllis Harding say, You know, at my age when I grew up, there was a certain discipline that was accepted and they carry forward that kind of discipline because that's what their parents did.

These defendants share a lot of things in common. They have somewhat of a common family history, although they were separated at times. Separated for a good period of time when Reginald Carr was in prison. They have the same eye color. They are now both wearing glasses, although their mother said that Reginald doesn't need them. They share some DNA. They share intelligence. They also share immediate self gratification. That they want something and they want it now. And they also share choices. In our lives the choices that we make are important

[p.143]

but what's even more important is the ability to take responsibility for those acts. To be a stand-up

kind of person and excuse yourself if something was said wrong. It wasn't correct.

People, we hope, use a moral compass to serve as a guide in their lives. But in this case, it wasn't the system that failed and it wasn't Janis Harding that failed. It was the defendants who failed to abide by the law and it was by their choice. We hear all the time the comment that says guns don't kill people. People kill people. That's right. And in this case they chose the Lorcin .380 as the messenger and their message was loud and clear. Their message was unmistakable. Their message was grievous and heinous and atrocious and vial and other words that cannot be described. Their choices were to leave no tracks, to leave no trace, and certainly not to leave anyone alive who would pass on the account of these evil and horrible events.

But the events were passed on by a survivor, and you will reflect even to the testimony of Tronda Adams, who was watching TV, saw Reginald Carr being arrested, and tried to get Jonathan Carr to talk to her, to admit

[p.144]

something because it was all too coincidental, the FUBU shirt, the cars, everything else that was going on. She baited him a little bit. She said, You know, they found four people dead. Well, that must have woken him up. Four, there were five. Maybe I counted wrong. Five, it had to be five. Well, yeah, too bad, what a tragedy. Yeah, and they took them to ATMs. How did they know that? They knew it

because there was a survivor but it wasn't planned that way.

Covering the tracks of your crime in this instance is an aggravating circumstance that you may consider. That you may consider that these defendants committed the crime in order to avoid or prevent a lawful arrest or prosecution. It clearly -- it's very clearly true. They did it in the worst way. They just didn't tie them up or leave them naked in the field in the cold to run home. Kind of take a couple of hours to get their frozen -- to get home. Left them frozen in time. And when you are going to do something like that so nobody detects your crime, you have a lot of options. You lock them in the closets, put a gag on them, pull the telephone wires out. You could tape them all up. You could flatten

[p.145]

their tires. Pull out the phones. You could cut the wires. You could put a do-not-disturb sign on the door. That didn't happen.

THE COURT: One minute.

MS. FOULSTON: It didn't happen because it wasn't the choice of Jonathan Carr and Reginald Carr. And, ladies and gentlemen, as they sit there, the Court has told you you can consider sympathy and you can consider mercy for these two defendants. That's in here. And, Ladies and Gentlemen of the Jury, as District Attorney of this jurisdiction, I seek the death penalty. And, ladies and gentlemen of this jury, I ask you to show Jonathan and Reginald Carr the same mercy that

they showed to Jason Befort, and Heather Muller, and Brad Heyka, and Aaron Sander. No mercy. Thank you.

THE COURT: Thank you.

Mr. Greeno. Jay Greeno for the defendant Reginald D. Carr, Jr.

MR. GREENO: May it please the Court, Mr. Carr, Mr. Carr, counsel, Ladies and Gentlemen of the Jury. Twenty-five years ago tomorrow, there was a little boy that was born in Cleveland, Ohio. He was two months' premature. He was

[p.146]

jaundiced. He had a low- birth rate. He spent the first three to four months of his life in a hospital recovering from that birthing experience. And then he was delivered up to two young parents; Janis, 18, Reginald, Sr., 19, who had previously given birth to another child two years earlier, Temica, when Janis was just 16 and Reginald was just 17. They had to leave Temica with Reginald's mother for the first year of the life because their parents didn't approve of the relationship and marriage and they ran off and they hid. They came back and they took Temica and ran off again and they got married when -- just a few days after Janis turned 18, sometime around the time that Reggie was born.

You know, it occurred to me, and I heard this out of a movie actually, you know, you have to have a license to be a nurse. You have to have a license to be a contractor. You have to have a license to practice law but anybody can have a child. That

requires no training. There's no active supervision to make sure you are doing it right. You are left upon your own devices to be responsible for the molding of a human being. The human being that started out early in his

[p.147]

life like this young man right here. That's Reginald Carr, Jr. When he was little, his family was intact and before all the abuse started in his family. And ended up on December of the year 2000 like a guy like this, committing the horrible acts that you guys have heard all about. Nobody's denied it. That is the most atrocious tragedy you can imagine. It begs the question, how does another human being do that to another human being?

In this phase, we have attempted to try to explain how you get from this point to this point. We are not saying that Reggie is not responsible. We are not saying that Reggie shouldn't be punished for what he has done. What we are saying is that Reggie deserves the understanding of 12 citizens who is going to decide his fate in determining whether or not the choices that somebody else made for him, before he was born and during his childhood, whether those choices affected his ability or his ability to make good choices later on.

Reggie should be locked up. He should be locked up forever. And the Court gave you an instruction that says if you save his life, at a

[p.148]

very minimum, he will be locked up in a cage for 50 years. I have not been 50 years on this earth. Fifty years before he will ever see a parole board. A parole board who has probably not even been born yet. And he is looking at the possibility of 268 years. In all likelihood, if you spare Reginald Carr's life, he will die in the penitentiary.

Mrs. Foulston got up here and talked about the PET scan thing. Well, you know, we didn't hear about Dr. Woltersdorf. And if you will recall Dr. Woltersdorf's testimony is that he conducted these neuropsychological tests. He wanted to find out what was wrong with Reginald Carr's brain and he did those neuropsychological tests over a year before Dr. Preston got involved in this. Dr. Woltersdorf did not release the results of his testing, did not tell anybody about the results of his testing because he didn't want anybody who has a possibility of manipulating the subsequent tests to conform their tests with his results. And you know what, he didn't do that. And you know when Dr. Preston read those PET scans, if you recall Dr. Woltersdorf's testimony, it was confirmed that

[p.149]

the PET scan that Dr. Preston analyzed confirmed what Dr. Woltersdorf said. You got to think, you know, use your common sense here. You know, we got a guy, you think this old man would come in here and lie to you about this? A doctor, a professor emeritus, at the University of Kansas School of Medicine in Kansas City. Forty years he has had a

distinguished career. This guy is going to come down to Wichita, Kansas, manipulate the data and come in here and lie to you guys for somebody he doesn't even know. And just so happens when he is lying to you, his results conform with what Dr. Woltersdorf told you. And Dr. Pay told you Dr. Woltersdorf is very competent, he works with him all the time. You know, we didn't come in here making excuses for this guy. We came in here to show you what it was like to be Reginald Carr when he grew up and how he got to be the way he is.

Dr. Reidy, I thought, did an excellent job going through this one by one, bringing in the studies from the United States Department of Justice. You know, we find these factors in people that have caused violent crimes that do violent crimes. This is a violent crime, no

[p.150]

getting around it. These are the factors we see. And we are looking to determine whether or not some of these factors exist in Reginald Carr's life and they almost all do. And, you know, Reggie didn't come in here and blame it on his mother. You know, he wasn't very happy about this. He excused himself from the courtroom on more than one occasion. That was us because we went out and we did the investigation and we asked the questions. Dr. Reidy asked the questions. He compared the results that he got from answers he got from other people. He told you, he says, I don't have any confirmation on that. I don't have any confirmation. It is all for you to consider to determine whether or not you want to give that any weight. But when you look at the

nature of this crime, look at that. That in and of itself speaks volumes. This crime had to be committed by a damaged individual or individuals as the case may be. We just don't grow up that way without some sort of intermingle factor, some sort of damaging factors that Dr. Reidy talked about.

I am going to spend a little bit of time talking about those things to kind of remind you

[p.151]

what we heard in this particular case. Right after Reggie was born, 14 months almost to the day, he had a little sister that was born, Regina. At the age of two, Regina was diagnosed with leukemia. At the age of three, she was dead. Reggie was four-years-old. You can only imagine what that loss had to mean to Reggie. How do you comprehend that? How does a four-year-old comprehend the fact that his three-year-old sister is never, never coming back home. You know, I think it's evident in the fact that Reggie chose to name the only daughter that he has Regina, regardless of the death of his sister and the problems that started with the marriage.

The problems -- a lot of people see this stuff. You have to consider the specifics of these problems, alcohol and drug abuse going on with the parents. We got domestic violence and we are talking about seeing your father chase your mother down the street with a brick. You know, having your mother beat your father up with a baseball bat. We are not talking about a shove or a push or a slap here. We are talking about large amounts of violence involved in these kids'

[p.152]

age early, early, early on. I mean,, way early. Allegations of infidelity coming from both parties, and they were probably true. Mom told you that she thought that the children were unaware of these problems but later learned they were painfully aware of this.

Temica called this family before the Brady Bunch and then afterwards it was horrible. They all saw the family crumbling down around their ears. Mom excused herself from their homes. I wasn't abandoning home but I was leaving abuse. She was leaving the children with a guy that was abusing alcohol, that was abusing her, and engaging in sexual infidelities. I mean, you just don't do that.

Then all of a sudden, out of the blue, Janis shows up, snatches these kids up, takes the kids out of the home. All this time, the kids don't have any explanation what's going on here. Mom and Dad never sat down and said, We are having problems with you and we are going to try a trial separation and you need to understand what is going on. They tried to keep this all a secret and from then on, everything is moot. She snatches the kids up and takes them over to her

[p.153]

mother's house. We aren't talking about emotional disturbances here. We are talking about somebody who is mentally ill. You know, Dr. Harding was kind of reluctant to talk about it because she wasn't actually sure of what the actual diagnosis was of her mother's illness that she has known and seen

all of her life, basically. A medical doctor that can't tell you that the diagnosis of her mentally-ill brother. That may not be as reflective upon Dr. Harding as is on her whole family and how dysfunctional this family was even back then, all the way before Janis and Phyllis.

In the meantime, Janis continues to drink and distances herself from the children. You know, in fairness to Janis, she's got some problems going on here. She's a very young mother, got a boatload of kids to take care of. She has lost a daughter. Her husband is out being unfaithful. She hasn't worked. She has got a mother that's mentally ill. What's she going to do? And so Janis deals with her problems the way Janis can deal with her problems. She drinks. She emotionally detaches herself from the children because she, quite

[p.154]

frankly, doesn't have a lot left. This marriage has taken its toll on her. These children are experiencing the only caregiver they have, that can form those attachments, that Dr. Reidy talked about, pulling away from them, separating herself from them, leaving the house, taking them to relatives.

She takes up with Rick Austin, further engaging in this separation from her children. Rick and her going into the bedroom. Her fixing the meals, leaving them on the stove for the kids to eat. You know, and this whole vegetable thing. You know, we are not talking about, You are in trouble, you are on punishment, so I am going to make you eat

vegetables. We are talking about a woman, you know, I have had it with you guys. You ate all the good food in the house so I am not buying anything until you clean all the rest of the stuff out. They are made to eat canned vegetables over and over again until they are all gone. That's not caring. That's saying I don't care about you guys anymore. You eat what's there until it's all gone and I will go buy some more. Is this what a mother does? You know, and it is kind of funny when you look at

[p.155]

it. Ms. Harding goes, Well, and I am talking about Janis. Yeah, I did spend quite a bit of time in my room but, you know, the kids all had their rooms. They weren't allowed in the living room. They couldn't come in there and watch TV in the living room. We never had a place where we all gathered together to spend any family time. No bonding or anything like that but, you know, the kids all had TV and VCRs and videotapes. Those items there certainly entertain you and nurture you as a child. That will teach you how to make bonds with other human beings. That will teach you empathy for somebody else's suffering. It doesn't. We all know that and that's what she did.

That's kind of interesting, the funds to buy all these things but when she had to ship Temica out to California for two years and when she had to ship Jonathan down to Texas for two years, we didn't have the money to go see them. We couldn't make any phone calls. We couldn't write any letters to my kids. We couldn't do anything. Reggie is staying in the house where his mother is more attached. When

the kids were going off somewhere else. His brothers and

[p.156]

sisters, the only other people he can rely upon.

You know, stability kind of disappeared in this guy's life. Eight schools in eight years. Can't make any friends, can't have anybody come over and spend the night, doesn't know anybody. Moves from residence to residence from first his mentally-ill grandmother. Bill and Cortez Jones, Janis' Godparents, I think she said they lived with them for about a year. And several residences in the suburbs of Cleveland and finally that move to Dodge City, you know, where they don't know anybody. That's got to be a completely different environment than it is in Cleveland, Ohio, where the neighborhood they grew up in is predominately black. They feel comfortable. Dodge City, there is not very colored folks over there.

What was it like for a kid going into the environment and without the tools to socialize and adapt? Okay. So Reggie started getting in trouble. Everybody, well, you know, he really didn't get in trouble. Yeah, he got in trouble. This guy had numerous absences in the 8th grade. Got kicked out for sexually harassing the teacher. That's kind of unusual behavior for an

[p.157]

eighth grader. By the time Reggie got to -- well, long before the time he got to Dodge City, Reggie had already received the gift of an antisocial personality

disorder. That was described by Dr. Woltersdorf, which basically facilitated his entry into a criminal lifestyle. When he was in Cleveland when he was 11 years old, he was holding drugs for drug dealers. He was dealing drugs at age 13. He was involved with a cousin, Eric, Jr., who dies a violent death after they move to Dodge City, Kansas; he gets shot in the head.

Engaging in very, very inappropriate sexual conduct. You will recall the reports of Reggie touching the girls his mother was babysitting, having sex, and incredibly, upstairs with a girl, Amber, who lived upstairs. And Barbara Harding, bless her soul, coming in here to tell you about this. That was the most painful thing I saw from Reggie's family. She didn't want to talk about that. It wasn't pleasant for her. But you needed to know that because something happened to these kids. Something happened to them that damaged them to cause them to act this way.

This is what these doctors were here to

[p.158]

tell you about. That's why Dr. Reidy was here to tell you about this. That's why Dr. Woltersdorf was here to tell about that. That's why Dr. Preston came down here and did that PET scan. But if you choose not to believe Dr. Preston and you want to believe Dr. Pay, who doesn't read PET scans normally, it doesn't matter. Dr Pay says, your know, we do confirmatory tests all the time. Sometimes they do, sometimes they don't. That's all the PET scan was, was to confirm what Dr. Woltersdorf had found

during the course of his neuropsychological examination. Dr. Preston confirmed it but they choose to call him a liar.

MS. FOULSTON: Objection, Your Honor, to the characterization of what I choose to call someone.

THE COURT: Overruled. Press on.

MR. GREENO: Thank you, Your Honor. You have the right to use common sense in evaluating this evidence.

All this time, you know, Reggie's kids are being shipped off. Mom is not having anything to do with them. Reginald, Sr., who was obviously an important part in Reggie Jr.'s life just all of a sudden gets up and leaves him alone. He

[p.159]

just doesn't go there. And then, you know, he is supposed to go see his father. Go out there and spend some time with his dad. He has been, you know, with his relatives in West Virginia. You know, just another place for him to go. And then at the last minute his dad calls and says, Don't come.

Now, State of Kansas as well, Detective Craig, talked to him. He said, We had an earthquake hit and his home was damaged. Well, you know, California doesn't have earthquakes every day. They don't have -- it would be hard to believe that Reginald Carr, Sr., could never find the time or means to spend time with his son, a son that he named after himself. He left. He had another family, who he later abandoned, left those alone in

Las Vegas. You heard that from several doctors in this particular case.

The whippings, the beatings that were imposed upon the children and you got to think about this. You know, not just your general belt whipping. We got a mother who names these different belts, Hot Rod and Heat Daddy. Think about the way the stuff is inflicted. You know, the children when they knew they were going to be

[p.160]

beaten with the belt were required to pick the tool that was going to be used on them. Many times being forced to strip naked and laid down and be held by their siblings while their mother inflicted this punishment, sometimes to the point where she is so tired to go on she had to rest and she came back and do it again. Temica Harding told you she beat her with an electrical cord and she still has the scars.

We are not making excuses here. We are telling how these kids' lives were shaped and how they came to make the decisions that resulted in this horrible crime. The accident Reggie had when he was in West Virginia, on the bicycle, hit his head, had loss of memory, indicative of brain injury. All the fights he had that was too numerous to mention. Those are all important factors in the development of Reggie's brain. And if you believe what the doctors tell us, a brain even today is not completely formed. You know, the domestic violence over and over again, either witnessing of the violence between two people that are supposed to be

loving each other and the violence that's perpetrated on these kids by the people that are supposed to love them. They see

[p.161]

their stepfather whom they really haven't developed very much of a paternal or parental type contact with holding a gun to their mother's head. Drug and alcohol use. Mom and dad both drank every day. Dad abusing Robitussin, would hallucinate.

And the abandoned father. You know, and it's sad, can't even get your father to come out here and sit in front of the jury and tell them why you left them. You know, why I decided to leave the family and have no contact. Won't do it. Two sons, only sons, charged with capital murder. On trial for their lives. Can't be bothered with that. Can't come to Wichita, Kansas, telling this jury why they should save my sons' lives.

You know we have -- in order to impact all this stuff, to see how it manifests this stuff, We have this thing with Jehovah Witnesses and not celebrate Christmas or any of these little holidays or celebrations. But then when we were -- we are not practicing Jehovah's Witnesses any more, there isn't any reason to celebrate those kinds of things. They are family things. Those are things when we would get together and hold

[p.162]

each other and bond with each other and talk, work with each other. You know, develop a relationship as a family, understand how it was for somebody

else to have some pain. Understand what it is like to empathize with somebody else. They never had that in their family. Never, ever, and they never learned it. Despite all that, and you know we talked about a lot of bad things with Reginald. We didn't bring any witnesses in here to tell you he's a good guy. Good guys didn't commit the kind of crimes Reggie has been convicted of. Good guys don't go to prison when they are 18 years old and serve five years and come out being called Smoke. That just doesn't happen with good guys.

But Reggie has done some good things in his life. He has tried to be a father. He has tried to maintain some sense of a parent with these children that he has got. He has tried to get them to not make the same mistakes he has done. That is the purpose of those letters. Then there's kids out there that love him, that will continue to love him. They will never see him walking down the streets of Dodge City, going to the park for ice cream, but they can still have

[p.163]

contact with their father, and their father can still try to instill in them the value of establishing a relationship between the child and the parent. The value of making sure you conform your conduct to the law. Remember that letter that Roshall Cossman read in here where the little boy says, I will be good, daddy, because you told me to. And you got to think about the impact the execution of his father is going to have on Anthony and Regina.

We put in some art work that Reggie did Exhibit A 25, pictures that he drew for his son, daddy and son. Isn't that something? A little cartoon that he wrote, Daddy for Son. I mean, he doesn't have much but he does have something he can contribute to his children. He can only contribute so much from where he is going to spend the rest of his life.

After we have talked about all the bad things that happened in Reggie's life, I mean,, you didn't see any witnesses from the State of Kansas come in here and say I grew up and I lived next to these guys, they had a wonderful home. Reginald, Sr., and Janis didn't ever get in any fights, no domestic violence, kids well cared

[p.164]

for. You didn't see a forensic psychologist come in here and say the studies from the Department of Justice and the Surgeon General's Office and the FBI, they really apply in this particular case because those are all different. You didn't see anybody come in here and do that. What you saw is people that really took a look at what is going on in this guy's life and try to give you some insight on how he got to the field on December 15th of the year 2000 and how he was able to perpetrate the crimes for which he has been convicted in that horrible manner.

You know, it is extremely difficult as Reggie's lawyer to stand up here and talk to you and come up with the words that I think that might influence you to save his life. But I want you to know that as a juror in this particular case, we all know that you

are smart people. I think that it's -- you are all smart enough to understand that there are certain things about this evidence and some of the argument that you shouldn't buy. For instance, the Dr. Preston, Dr. Pay thing. Dr. Pay says I don't read these but I can see this one. Dr. Preston, who reads them all the time, says this is the way it is.

[p.165]

And why would he come down here and lie to you about that? Why would he jeopardize a pretty prestigious career? Don't be fooled by thinking we are up here trying to make excuses for Reggie's life.

We are talking about things you need to consider. Reggie is going to be incarcerated. He will be put in prison basically forever. He is going to be caged up. And Reggie needs to be caged up with the lions in the penitentiary, so all of us rabbits will be safe. That's not going to be a problem with us. Reggie is not going to have a good time in prison. Reggie is never going to be able to determine again when he gets up in the morning or when he gets to go to bed at night. He is never going to be able to determine the food he gets to eat or clothes he is going to wear. He is never going to be able to determine who the people he is going to see and when he gets to see them or the circumstances of those visitations, if they occur. Any attachment that he gets with any guards who are going to be supervising him are necessarily going to fade away because nobody works for 50 years. The people he is going to develop his attachment with

[p.166]

will be transferred, will retire, will quit, will go someplace else. His mother will die while he is in the penitentiary. His father will die while he is in the penitentiary. By the time he is first eligible to see the parole board, if he gets the minimum sentence he can possibly get, his oldest son will be older than Val Wachtel over there. That's how long he is going to be in the penitentiary. He is actually going to be in there forever. He is never going to be able to walk out and get in his car and drive off somewhere and go visit friends. Never going to do any of that stuff that he enjoyed for the brief time that he wasn't incarcerated.

Reggie is going to be punished and Reggie needs to be punished. I got to confess to you that I don't have a lot of experience arguing these kinds of cases, just not been that many around. I like to think I have done this once or twice in regular criminal cases and I like to talk a lot about in closing argument about justice. I don't think there's an argument for justice in this particular case. The decision you guys are going to bring about is where probably one of the most important decisions you

[p.167]

will make in your life. Certainly the most important decision you will make in Reginald Carr's life and regardless of what your decision is, somebody is not going to be happy. If you decide to execute Reginald Carr, the State of Kansas will be satisfied and perhaps some of the family members of the victims will be placated for a little bit. But that will not

bring them the kind of solace that they deserve in this particular case.

MS. FOULSTON: Your Honor, I object. This is outside the scope of the evidence.

THE COURT: It is indeed.

MR. GREENO: But if you execute Reginald Carr, you create a whole new set of victims, his family, his mother who really has -- she told you she was sorry. She apologized to you for whatever it was she did that was wrong and she didn't know at the time that she was doing anything wrong. His children and the people that do love him now, those people will be victims once again.

MS. FOULSTON: Your Honor, I object to the argument that to follow the law is victimization of the defendants' families.

[p.168]

THE COURT: I will overrule the objection. Press on.

MR. GREENO: You get to have the opportunity to extend mercy to another human being and a human being that couldn't extend that mercy to another like he failed to do on the night of December 15th. But you have the opportunity to extend that mercy to him. To give him the hope that at some point in time, he may change his life. He may be able to be of some benefit to him. Some day he may be able to say, I am sorry for what I did. And the people -- the families of the victims need to know that. If you vote not to execute Reginald Carr,

and all we need is one of you, all we need is one person that says, you know, I can see where this guy came from. I can see what those doctors were talking about. How he didn't -- how his ability to make those choices was affected and how when, you know, he was thinking about whether or not he should kill those people, their lives just didn't mean that much to him. Reggie's moral compass wasn't thrown away by him, it was taken away from him. You need to understand that that's why I am here telling you, you have the power to save

[p.169]

somebody's life here. Somebody that may not deserve it for what he has done, but may deserve the torture of prison because of the way he was treated, the way he was brought up, and the way he was formed. We are not born that way. We are formed that way and he didn't ask to be in that family.

I will ask that you go back there and really look at this stuff and certainly decide whether or not these aggravating factors foreclose any mercy in your hearts at all. Any opportunity for Reggie to maintain a relationship with his children, perhaps be the father that his father wasn't. That's what we would ask you to do. Thank you very much.

THE COURT: Let's go ahead, members of the jury, let's go ahead and have a 15-minute recess and we will take the closing arguments of -- Mr. Evans, you are going to speak?

MR. EVANS: Yes.

THE COURT: A 15-minute-recess, members of the jury.

(A recess was taken, after which the following proceedings were had outside the presence of the jury with both defendants being

[p.170]

present:)

THE COURT: Thank you very much. Ms. Marquez, bring the jury in, please.

MS. FOULSTON: Your Honor, I will -- I have a motion.

THE COURT: You better get at it.

MS. FOULSTON: Your Honor, it seems to me we had a motion in limine with regard to victim impact information and it seemed to me that in his closing argument, Mr. Greeno has opened the door to -- and I am compelled to say I don't understand how they can speak for the victims in this case and their families. And we believe he has opened the door for the prosecutor to be able to respond to these statements that he has made, although there have been a previous motion in limine. We certainly wouldn't want to do anything to violate a Court's order and I wanted to inquire of the Court at this time.

THE COURT: I don't believe he has opened the door up for a full victim impact although a remark answered by the lawyer would be appropriate.

MS. FOULSTON: Thank you.

(The jury returned to the courtroom and the

[p.171]

following proceedings were had with both defendants present:)

THE COURT: Members of the jury, the closing address for Mr. Jonathan Carr. Mr. Ron Evans on behalf of Mr. Jonathan Carr.

MR. EVANS: Thank you, Your Honor. May it please the Court, counsel, I think you will have heard the last lawyer talk in about an hour and you will have the case. It was said by another lawyer some time a couple of weeks ago that you didn't sign on for this to have something happen and I remember thinking at this time, you know, you didn't sign on for this at all. You were drafted. I signed up for it. This has been a long trial. Ten weeks for me. But I signed on for this and you didn't. And the reason I bring that up, I want to thank you folks because I think you have paid a lot of attention to this case. Regardless of what your verdict is, it is always a pleasure to talk to juries that are serious about their business. You were out parts of three days on that last phase of this trial. I can tell that you worked hard. You looked at everything. You thought about it. You asked a question. You asked a good question and I will

[p.172]

let it sit with you folks, not that I have a choice, but I feel comfortable letting it sit with you folks.

And I appreciate your attention in this case, tried not to waste your time. Dr. Cunningham might have gone a little long yesterday. I apologize for that. He is a talker.

Now I think you needed to know some things about Jonathan. Maybe won't make any difference to you, but it's my responsibility to tell you some things and to present you some evidence about him before you can sentence him. I don't think you need to know every time he had an upset stomach or a headache or every time he fell down and skinned his knee. We tried not to present that sort of stuff to you because I think it wastes your time. You know, if he had a bad family upbringing, maybe it didn't cause him to do this, maybe it is not a legal difference that you should have found him not guilty of, causing you to find him not guilty of these offenses, but it might have had some impact. And it is for you to decide how much impact a bad family life has. You need to know his parents didn't get along and

[p.173]

divorced early. You need to know his sister died. I don't know you folks, maybe you had a sibling die young. Maybe that didn't exactly cause the carnage, the horrible thing that happened in this case, but you need to know it. So you need to make of it and give it the weight you think it deserves.

I won't rehash that family chasing each other down the street with bricks and beating each other up with baseball bats. I think you know that this was a bad family situation and you know that

because of what has come out of this family. There was something going on there that wasn't healthy. There was something going on there that caused these young men to sit here facing the death penalty, convicted of these horrible crimes. There was something going on in that house. And we brought you the best information we could as to what was going on.

You needed to know, I think, that when he was in third grade -- when Jonathan was in third grade, he got accused of raping another little girl. Think back to when you were in third grade. Harder for some of us than others, probably, but in third grade you are accused of a

[p.174]

horrible crime, a crime that your classmates taunt you about. Bear in mind the same time you are accused of this, your family is disintegrating. Your little sister died. Your parents fight, they drink, they drug, and you got this Harvey Rice School thing going on. That's in the newspapers in Cleveland where Jonathan lived in at the time. You are in third grade. It gets so bad that you have to be exiled down to your aunt in Brownsville. I think it would be hard to come through that even if you hadn't done anything wrong at all. Not feeling like when you got to Brownsville there was your aunt and the family that you knew was now 1500 miles away. I think it would be hard for Jonathan not to feel damaged in some way, not worthy in some way.

I think you needed to know that there's a history of mental illness in the family. Not that that makes

him not guilty. You decided that. We didn't allege that or run that defense at you folks. He chose to do what he did. But there is some literature that Dr. Cunningham told you about. There is a reason why that might have affected Jonathan in his development and I think you needed to know it. You needed to know about

[p.175]

Grandma Barbara and Uncle Mike.

You needed to know about evidence of mental illness in Jonathan. I mean, trying to kill yourself when you are seven by hanging yourself, drinking antifreeze when you are 17 in an attempt to commit suicide is not signs of a healthy mind at work. It is -- I can't think of a more desperate way to try to kill yourself than to drink antifreeze. We didn't just make that up. That's confirmed by other people.

There is something going on with this young man and the way he feels about himself and the way he feels about other people and the respect he has for himself. You know, that's maybe the key thing here. How much respect does somebody have for themselves when they try to kill themselves like that? What was it like for him in school? It is important for you to know something about that. I mean, you know that he has dyslexia. He was held back in middle school. You know that some of the kids teased him because of his learning disability. I think that goes into the respect that he has for himself. And hasn't it been your experience -- some of us has lived longer than others -- but all of us have

[p.176]

lived long enough to experience one of the truest things you are going to find in this existence. If you don't have respect for yourself, you don't have respect for anybody else.

The things that caused Jonathan to not respect himself are there, things that happened to him in childhood and things that you needed to know about. Do they excuse what you have convicted him of? No. Should you feel sorry for him because he had these things happen to him? I don't care if you do or not. Is it mitigating? Is it something you should consider before you impose the ultimate punishment on him? Absolutely.

Ms. Foulston said that brain injury, the brain abnormality was the foundation of the mitigation. Dr. Preston said a lot of people have that brain injury. He didn't say that brain injury caused Jonathan to do these crimes. Never even went there with it. If someone has a brain injury and it confirms something about an accident that he had with a go cart, and it affects certain parts of the brain that might involve his thought processes, by golly, I think you ought to know it. It's something that's in

[p.177]

him that you ought to know.

Did it cause him to do this? We have never alleged that. I don't now. Is it a factor in his development? Dr. Cunningham says it is and he showed you the study that indicates that. Dr.

Cunningham told you about the risk factors that the Department of Justice has come up with. Those risk factors as relates to Jonathan, he has 24 of the 26 of them. Risk factors that are predictive of violence. He went through that with you in some detail. I will not rehash it. A lot of those factors -- most of those factors aren't his fault, where he grew up, yet some of them were. You heard something about his drug use. That's his fault. He chose to use drugs. That he chose to drink. Might be mitigated by your family history, by how much self respect you have for yourself, but it is something you ought to consider.

You haven't heard of any serious previous criminal record before this case. He has never been to prison. Now I know he jumped in way over his head and these crimes are as serious as they get, as serious as I have seen. But that is a statutory mitigating factor that you can

[p.178]

consider, his lack of a serious criminal record prior to these offenses.

His age. Maybe that's not important to most of you. We spent a lot of time picking this jury and if I heard one thing more than practically anything else I heard, if you are old enough to do the crime, you are old enough to face the music. But we all know that, certainly those of us that have lived a while, what you thought about when you were 20 isn't the same thing that you think about when you are 40 or 45 or 50. You change.

Dr. Cunningham gave you some scientific data to support why you change. There are physiological

reasons. The brain continues to develop. Is that an excuse for this crime, the fact that he was young? I am not in the excuse business up here. That's not what this second stage, it's not what this phase is about at all. Not about making excuses. It's about whether he deserves the ultimate punishment.

I would like to talk to you just a minute about his demeanor in this trial. I work in the death penalty phase. I am in the business of representing people that have done horrible

[p.179]

things, at least they are accused of. But I can tell you it has been a pleasure to represent Jonathan. He sat here. You watched him. You are entitled to observe his demeanor during this trial. He has behaved himself. He has come to court every day, unlike his brother. And he has treated me like a gentleman. It's been my pleasure to represent him.

MS. PARKER: Your Honor, I object to this type of information not in evidence.

THE COURT: Overruled. Press on.

MR. EVANS: And in that line, along with that, there is good in this young man. I know we are here because he has done a horrible thing. But there's good in him. He is not some monster. He behaved monstrously on that night. Why? I don't know. I can't tie something in a ribbon and say, Ah, this is why he did it. There is the explanation for the monstrosity of these crimes. But I can tell you he is not a monster. Leroy and Juanita Culver told you that, that couple from Dodge City. They saw the

good side of him. They saw the side that wanted to learn. They saw the side that wanted to work, that he was on time, and that was actually trying to better

[p.180]

himself in some way. They saw that side of Jonathan. You saw those folks testify. They didn't strike me as a couple of old fools. They struck me as nice, down-to-earth, common sense people who saw something in this young man that they reacted to. A goodness. A reason why they wanted to drive in here and testify for him. You saw it in Jessie Harris. Never been on a plane before. Still mad at Jonathan. I think Mr. Harris told you it was clear that he feels like he invested some things in Jonathan. He is disappointed and mad at Jonathan. But he is mad because he sees the good in Jonathan, too. He saw it as Jonathan lived with him in Cleveland.

If you decide to exercise the mercy in this case, and I think the reason of what you heard in mitigation outweighs the aggravation, when you add all the different pieces of mitigation up. If you decide, that's true, as I think Mr. Greeno touched on, he is still going to jail for at least 50 years. Now that's 50 years if the Judge decides to give him the minimum sentence on everything, on all of the other counts, the Judge decides to give him as much leniency as he possibly can and run all of those cases

[p.181]

concurrently with each other. But still the first time he is going to have an opportunity, not a ticket out, but an opportunity to see a parole board to try to convince them that he should be released is 50 years.

You know, any one of you can decide to save this young man's life. Any one of you. You can decide that there is some good there. There is something worth saving. You don't have an opportunity to do that very often in this life, to save another life. You know our instinct to preserve life is amazing. It's there in all of us. If you saw him choking on the floor, you would try to save him right now. You would call 911. Your first instinct would be to preserve life. Life is precious in this world. Those of us who have lost somebody close to us know that. You have that opportunity in this case. You may never have that opportunity again.

And, again, it's been my pleasure to represent him. I contend you will not be saving the life of a monster but the life of a man that has done a horrible thing, a horrible set of things, but that there is some good in him, something worth saving. Like I said, Ladies and

[p.182]

Gentlemen, it's been my pleasure to try the case in front of you. You paid attention. If you pay attention now, I am sure you will, we have no complaint regardless of what you decide. I am sorry this case has gone on so long. We have asked a lot of you but you have come through splendidly. Thank you.

THE COURT: Thank you.

State's closing argument, Ms. Parker, for the plaintiff, State of Kansas.

MS. PARKER: Ladies and Gentlemen of the Jury, you are the established governing authority over this case. You are the individuals that sit here, who have indicated on voir dire that you have the fortitude, the fortitude to carry out the requirements of the law. This is not about satisfying Kim Parker and Nola Foulston, this is about satisfying the law of the state. And Reginald Carr and Jonathan Carr have rebelled against the authority of the law of this state that was instituted to protect human welfare and human life. They, of their own choice, have brought judgment upon themselves.

You know the law holds no terror for those who do right, only for those who choose wrong.

[p.183]

And they chose wrong. Their own experts told you, and the evidence that you heard, told you that they made their own choices to choose wrong. They had the ability to choose and their experts told you that they know what is right and what is wrong and Mr. Evans just got up here moments ago to tell you that his client Jonathan has the capacity to be good. They have the capacity to choose right and sit here in Court before you and they did not. They chose the path of evil. You know, this is not -- this is not going to be an enjoyable task for you. This is not going to be fun. It's not going to be a decision that's easy. But it's a decision that is necessitated, necessitated

by the conduct, the chosen exercise of free will conduct of these two men and yet they even stand here before you here today and of all the blame games that have been made, they want to blame you. They want to blame you that perhaps if you follow the law that somehow you are doing something wrong. Passing blame to Mommas and Daddies, society, and taking none upon themselves. These are murders that necessitate that decision of death because of the torture that was inflicted, just as the law says, heinous

[p.184]

and cruel, because of self-indulgence for monetary gain. Because they intended to leave no witnesses.

That's what the law, that's what the Legislature set out as an aggravator. And that's what they did. To avoid prosecution. To avoid what is now happening to them. They killed. They are morally culpable. They are morally responsible and the flowing of their culpability goes to each because they each had a major participation, neither was minor.

Mitigating circumstances under the law as you remember are those that reduce the degree of moral culpability. How has anything that they have said done that? Under the law, the Legislature said these things may be considered. That they have no significant history of prior criminal activity. Is that what you heard? That this crime was committed when the defendants were under the influence of extreme mental or emotional disturbance. The foundation of all, if any, this brain trauma. The

foundation of all their experts, all the evidence that you heard as Ms. Foulston told you, was based on a manipulated picture, an altered picture. A picture of a PET

[p.185]

scan that does not accurately reflect, does not accurately reflect their brains and this picture does not accurately reflect who they are. Their participation was equal. Can you tell who the shooter is? Temeka said that Reginald said he was. Jonathan brags about shooting them pop, pop, pop to inmates in the jail.

MR. EVANS: Objection to that, Your Honor. That is not in evidence.

THE COURT: I will sustain the objection. It's not in evidence.

MR. EVANS: Move for a mistrial.

THE COURT: Overruled. Disregard that comment, Members of the Jury, not mine, but the one about the statements by Jonathan Carr.

MS. PARKER: You heard the evidence regarding what was reviewed. You heard in this penalty phase much information about hearsay evidence. The bravado that was taken from each other in order to fulfill the task that allowed them to take all this property from the defendants (sic). Their premeditation, their intent. Did they act under the supreme duress, the stress or substantial domination of another? There's no evidence of that.

[p.186]

Ask the question regarding their age. They're adult males, ages 20 and 23 when these offenses were committed. We send individuals into war at 18. Are they responsible? Are they morally culpable for their acts? In this instance, they have lived away from home. They were living away from home. They were totally emancipated. They had individuals repeatedly trying to help them, coaches, teachers, SRS workers, all this time through this rough childhood that they had, which they ignored, and made their choices to continue in the acts that they did.

Is a term of imprisonment sufficient to defend and protect and protect the people's safety from the defendants? There is no evidence to suggest it is. In fact, the evidence from the defense indicates that these individuals have no remorse, care not, opportunistic, remorseless. How does that defend?

Dr. Woltersdorf indicated that after giving psychological testing to Reginald Carr, that he was an antisocial personality, otherwise known commonly as a sociopath, opportunistic, self-indulgent. That is who you are sitting in

[p.187]

judgment of, uncaring individuals. They beg you today for sympathy. They do. They are begging one of you, just one, because that's all they need. They beg one of you for sympathy. They want to get that sympathy by suggesting that their excuse is to deflect the responsibility. They want to beg you for sympathy because of that rough childhood. Because

of some abuses, which are primarily based on the evidence, the requirement to eat noodles with Miracle Whip, vegetables, pasta salad. And to be spanked with a belt while their legs are held down. Is that an insult to children who have been placed in bathtubs until their whole bodies have been burned? Is that an insult to the children who have been beaten and bruised on their whole body by their parents? Is that an insult to children who wished they had a roof over their head? Is that an insult to children who feel like they are starving in all parts of the world? To suggest that gives them a license to kill?

They talked to you about, well, they will be locked up for a long time in a cage. A cage with access to books, library, basketball, daily exercise, TV. They talk to you -- Mr. Greeno

[p.188]

talked to you -- the audacity to talk about the victims and about how Reginald Carr will never be able to form attachments, never be able to form relationships. Aaron Sanders, Jason Befort Heather Muller, and Brad Heyka will form no more attachments. They don't continue their attachment to their fathers, their mothers, or their siblings, or anyone else for that matter, any future children that they might have had.

MR. EVANS: Your Honor, objection.

THE COURT: Overruled.

MS. PARKER: There are no attachments that they will form.

This thing about the abuse, if you look at the evidence and listen to the evidence; they even try to latch onto abuse of their own cousin Barbara and claim it kind of as their own. Was Reginald, Jr., abandoned by his father? Not according to his own brother Jonathan Carr. They suggest that they couldn't get Reginald Carr, Sr., to come. They had the same power of subpoena that the State has. Maybe there were other reasons he didn't come. When his sons have mercilessly, pitilessly, without conscious committed these vial acts.

[p.189]

What contribution did Reginald Carr, Jr., make to his child before he was incarcerated? What contribution did he make then? Was he -- after the shooting of Linda Ann Walenta and before Birchwood, my children, I should go back to them. I should go home. At the ATM did he say, So I've got enough money now, let's get out of here. Let's go home to my children. Was he thinking about his children after the blood came from Heather Muller's head? This must stop. My child, my children. Yet he wants you to think about some contact with his children now. Is that just to encourage that contact just to those children?

Did Dr. Preston lie was posed by Mr. Greeno. No. It matters not whether he lies. Did he have motive to lie? While his career, he testified previously as you remember previously in a death penalty case, the first one in the State of Kansas, Gary Kleypas. He is retired. He has a new career. Does he have a reason to promote this type of manipulation? I don't know. You will have to decide.

You decide. These experts that have come before you is their careers. They are professional witnesses. This

[p.190]

is how they make their money talking to juries like you about stuff like this. Cunningham and Reidy made no attempt to independently verify the things they told you. They relied solely on biased accounts and accounts given of the family members which were even different between themselves. Can you rely on that? Can you rely on that to make that kind of a judgment, and even if you assume a neglectful, abusive childhood; their Mom wasn't there; their aunt wasn't there; their father wasn't there. They were there. They make choices. They make choices and they did and they knew it was wrong. And they didn't care. And they still don't care. No empathy for these people that were shot.

You know, nothing prevents Reginald Carr from changing his life, nothing has. Do that anytime. You won't prevent it by giving the death verdict. He chooses that, too.

Mr. Evans tells you he didn't want to waste our time. He put on extensive evidence, most of the evidence, much of the evidence of expert evidence was based on a manipulated picture. Was that a waste of time?

If Mr. Evans had been at Birchwood, would

[p.191]

he be pleased to represent Jonathan Carr? Sympathetic to a man who tried to kill himself three years before this, before these acts. Three years before, drank antifreeze like his dogs that somehow got it. Suggests that this isn't about sympathy. But it is because if you look -- if you look at mitigation, you have to look at what mitigation is defined as, reducing culpability. Because someone attempted suicide by drinking antifreeze three years before, three years later.

Well, first, in October, he represents himself as a juvenile when he is really an adult so he can avoid the consequences. Prior to that after drinking the antifreeze, remember he went to Cleveland. What did he do when he was in Cleveland? Well, there was a dispute between Dr. Cunningham and myself as to which of the stolen vehicles in Cleveland if it was the same kind. One he said maybe was a stolen vehicle which I had no other information. The other one was in 1998, he took the keys from the man at a convenience store.

MR. EVANS: Again, objection, Your Honor this is not in evidence.

[p.192]

THE COURT: I will overrule the objection.

MS. PARKER: He was 18. This is a year later. His attempted suicide, that he is seeking your sympathy about, did not stop him from making that choice that day. Or the choice to give false information about his age a month and a half before

these murders in December. With Jonathan Carr, it is clear that he seeks to avoid the consequences. He suggests to you his age should be considered. Why? Because he doesn't appreciate the consequences of his actions. You know that's not based on the evidence that you have heard. His participation in wearing gloves, trying to run from the police.

Mr. Evans is right, we all do have that instinct to save lives. And if you or anyone other than Reginald Carr or Jonathan Carr had been at 29th and Greenwich, would you have spare anything to spare the lives, to stop the execution of those denied due process? If the death penalty is not warranted for the murders of Aaron Sander, Brad Heyka, Jason Befort and Heather Muller, then what murder would warrant the death penalty if it's not this? It defies logic and reason to think that the tortuous

[p.193]

slaughter of these four young people who gave no fight, absolutely no fight. They didn't do anything to cause the rage or the loss of control. They submitted, hoping for life, and they got death.

You cannot, as you sit here, you cannot bring these young people back. But you can -- you can go back and deliver a just and legal punishment. And not because you're mad. Not because we're mad. And not because you want revenge. And not for any other base sort of reason. It's because you have looked and listened to all the evidence and the evidence warrants that kind of punishment under the established authority of the law of this state

because the aggravating circumstances, all four proven beyond a reasonable doubt clearly based on the evidence outweigh -- clearly outweigh any and all mitigation.

Anything that would reduce culpability has not been presented here. These defendants have received due process. It is your job and your privilege as jurors to do this duty and to continue to bring a just penalty.

I want to read to you something that was

[p.194]

said by a doctor in New York. Dr. Willard Gatlin is a medical doctor, about a murder in New York. And he says this. When one person kills another, there is an immediate revulsion at the nature of the crime. But in a time so short as to seem indecent to the members of the personal family, the dead person ceases to exist as an identifiable person. To those individuals and in the community who have good will, who have sympathy and empathy and warmth and compassion, only one of the characters in the drama remains with whom they can commiserate and that is the defendants. The dead person ceases to exist in our everyday reality and become part of a historic event. So we turn away from the past toward the reality because of our natures. And we look at the defendant and sympathize with him. And when that happens, the defendant usurps the compassion that is justly the victims'. And they will steal their victim's moral constituency today with you in the same way that they stole their lives.

Ladies and gentlemen, don't let that happen. Reginald Carr and Jonathan Carr, they do not deserve your sympathy. They don't deserve

[p.195]

your pity, and they don't deserve your warmth. They don't deserve your mercy because they gave no mercy. Not even on, as you remember, the request, the verbal request of Aaron Sander, did not cause them to give mercy. It did not cause whichever brother was not the shooter to jump on the other's back to help stop this horrific murder. They don't deserve your mercy and they don't deserve your leniency. Deliver a verdict that the law requires under the evidence that you have heard.

* * *

[p.199]

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

CERTIFICATE

I, Connie Uphaus, a Certified Shorthand Reporter, under and by virtue of the laws of the State of Kansas, and a regularly appointed, qualified and acting Official Reporter of the Eighteenth Judicial District of the State of Kansas, do hereby certify that as such Official Reporter, I was present at and reported in machine shorthand the above and foregoing proceedings in Case Nos. 00 CR 2978 and 00 CR 2979, heard on November 13, 2002, before the Honorable Paul Clark, Judge of Division No. 9 of said court;

That thereafter, upon the written order dated , 2002, I personally prepared the foregoing transcript, by means of computer-aided transcription, consisting of 199 typewritten pages, and that said transcript is a true and correct transcript of my shorthand notes, all to the best of my knowledge and ability.

SIGNED, OFFICIALLY SEALED, and FILED WITH THE CLERK OF THE DISTRICT COURT, 11th Floor, this day of , 2003.

_____

Certified Shorthand Reporter

Connie Uphaus, C.S.R.

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CRIMINAL DEPARTMENT

Case No. 00 CR 2978
Case No. 00 CR 2979

[Dated November 14, 2002]

THE STATE OF KANSAS,

Plaintiff,

vs.

REGINALD D. CARR,

Defendant.

THE STATE OF KANSAS,

Plaintiff,

vs.

JONATHAN D. CARR,

Defendant.

Volume 47

TRANSCRIPT OF VERDICT –
SENTENCING PHASE

NOVEMBER 14, 2002

Proceedings had before the Honorable Paul W Clark, Judge of Division No. 9 of the District Court of Sedgwick County, Kansas, in the Eighteenth Judicial District, at Wichita, Kansas, on the 14th day of November, 2002.

APPEARANCES:

The State of Kansas appeared by Ms. Nola Foulston, District Attorney, and Ms. Kim Parker and Mr. Kevin O'Connor, Assistant District Attorneys, Sedgwick County Courthouse Annex, 535 N. Main, Wichita, Kansas 67203.

The Defendant Reginald D. Carr, Jr., appeared in person and by Mr. E. Jay Greeno, Attorney at Law, 250 N. Water, Suite 215, Wichita, Kansas 67202 and by Mr. John V. Wachtel, IV, Attorney at Law, 301 N. Main, Suite 1600, Wichita, Kansas 67202.

The Defendant, Jonathan D. Carr, appeared in person and by Mr. Ron Evans and Mr. Mark A. Manna, Attorneys at Law, Death Penalty Defense Unit, 112 SW 6th, Suite 311, Topeka, Kansas 6603,

Connie Uphaus, C.S.R.

* * *

[p.3]

(The following proceedings were had at 11:27 a.m. on the 14th day of November, 2002, in the presence of the Jury outside of the defendants' presence:)

THE COURT: What time did you want to come back, Mr. Presiding Juror?

MR. BRILEY: 1:20.

THE COURT: The admonition still applies and you know what to do is get all 16 of you back and tell us and you can resume your deliberations. Thank you very much for your work this morning. I will see you at 1:20.

(The proceedings were recessed for the lunch hours after which the following proceedings were had after further deliberations:)

(The time is 5:25 p.m. and the following proceedings were had before the Court with both defendants being present:)

THE COURT: Thank you very much. Ms. Marquez, bring the jury in. Any disruption in the reading of the verdict, I will stop the proceedings, clear the courtroom and continue with the reading.

(The jury returns to the courtroom, and the following proceedings were had with both defendants present.)

[p.4]

THE COURT: Mr. Presiding Juror, I understand you folks have a verdict.

MR. PRESIDING JUROR: Yes, we do.

THE COURT: Would you hand the forms to the bailiff, please, sir?

(The verdict forms are handed to the bailiff, who in terms hands them to the Judge, after which upon review by the Judge, the forms were read by Ms. Marquez:)

THE COURT: I will approve the verdict as to form. Ms. Marquez, publish the verdict, please, ma'am.

MS. MARQUEZ: On the case of the State of Kansas vs. Reginald D. Carr, Jr., Case No. 00 CR 2978, Verdict Sentencing Phase. On Verdict Form 1, Count 1, capital murder of Heather Muller.

We, the jury, being duly sworn upon our oath make the following findings concerning the sentence for the defendant Reginald D. Carr, Jr.

As to Count 1, capital murder of Heather Muller, we find unanimously beyond a reasonable doubt that the following aggravating circumstances have been proved to exist.

(1) that the defendant knowingly or purposely killed or created a great risk of death

[p.5]

to more than one person.

(2) that the defendant committed the crime for the defendant's self or another for the purpose of receiving money or any other thing of monetary value.

(3) that the defendant committed the crime in order to avoid or prevent a lawful arrest or prosecution.

(4) that the defendant committed the crime in an especially heinous, atrocious or cruel manner.

We find unanimously beyond a reasonable doubt that the aggravating circumstances found to exist outweigh mitigating circumstances found to exist.

As to Count 1, capital murder of Heather Muller, we find that the proper Sentence for Reginald D. Carr, Jr, is death. Dated the 14th of November, 2002, signed William C. Briley.

Verdict Form 1, Count 2, capital murder, Aaron Sander. We, the jury, being duly sworn upon our oath make the following findings concerning the sentence for the defendant Reginald D. Carr, Jr.

As to Count 2, capital murder of Aaron Sander, we find unanimously beyond a reasonable doubt that the following aggravated circumstances have been proved to exist:

(1) that the defendant knowingly or purposely

[p.6]

killed or created a great risk of death to more than one person.

(2) that the defendant committed the crime for the defendant's self or another for the purpose of receiving money or any other thing of monetary value.

(3) that the defendant committed the crime in order to avoid or prevent a lawful arrest or prosecution.

(4) that the defendant committed the crime in an especially heinous, atrocious or cruel manner.

We find unanimously beyond a reasonable doubt that the aggravating circumstances found to exist outweigh mitigating circumstances found to exist.

As to Count 2, capital murder of Aaron Sander, we find that the proper sentence for Reginald D. Carr, Jr, is death. Dated the 14th of November, 2002, signd William C. Briley.

Verdict Form 1, Count 3, capital murder of Brad Heyka. We, the jury, being duly sworn upon our oath make the following findings concerning the sentence for the defendant Reginald D. Carr, Jr.

As to Count 3, capital murder of Brad Heyka, we find unanimously beyond a reasonable doubt that the following aggravating circumstances have been proved to exist.

[p.7]

(1) that the defendant knowingly or purposely killed or created a great risk of death to more than one person.

(2) that the defendant committed the crime for the defendant's self or another for the purpose of receiving money or any other thing of monetary value.

(3) that the defendant committed the crime in order to avoid or prevent a lawful arrest or prosecution.

(4) that the defendant committed the crime in an especially heinous, atrocious or cruel manner.

We find unanimously beyond a reasonable doubt that the aggravating circumstances found to exist outweigh mitigating circumstances found to exist.

As to Count 3, capital murder of Brad Heyka, we find that the proper sentence for Reginald D. Carr, Jr., is death. Dated 14th of November, 2002, signed William C. Briley.

Verdict Form 1, Count 4, capital murder Jason Befort. We, the jury, being duly sworn upon our oath make the following findings concerning the sentence for the defendant Reginald D. Carr, Jr.

As to Count 4, capital murder of Jason Befort, we find unanimously beyond a reasonable doubt that the following aggravating circumstances have been

[p.8]

proved to exist.

(1) that the defendant knowingly or purposely killed or created a great risk of death to more than one person.

(2) that the defendant committed the crime for the defendant's self or another for the purpose of receiving money or any other thing of monetary value.

(3) that the defendant committed the crime in order to avoid or prevent a lawful arrest or prosecution.

(4) that the defendant committed the crime in an especially heinous, atrocious or cruel manner.

We find unanimously beyond a reasonable doubt that the aggravating circumstance substances found to exist outweigh mitigating circumstances found to exist.

As to Count 4, capital murder of Jason Befort we find that the proper sentence for Reginald D. Carr, Jr., is death. Dated the 14th of November, 2002, signed William C. Briley.

On the case of the State of Kansas vs. Jonathan D. Carr, Case No. 00 CR 2979, Verdict Sentencing Phase.

Verdict Form 1, Count 1, capital murder, Heather Muller. We, the jury, being duly sworn upon

[p.9]

our oath make the following findings concerning the sentence for the defendant Jonathan D. Carr.

As to Count 1, capital murder of Heather Muller, we find unanimously beyond a reasonable doubt

that the following aggravating circumstances have been proved to exist.

(1) that the defendant knowingly or purposely killed or created a great risk of death to more than one person.

(2) that the defendant committed the crime for the defendant's self or another for the purpose of receiving money or any other thing of monetary value.

(3) that the defendant committed the crime in order to avoid or prevent a lawful arrest or prosecution.

(4) that the defendant committed the crime in an especially heinous, atrocious or cruel manner.

We find unanimously beyond a reasonable doubt that the aggravating circumstances found to exist outweigh mitigating circumstances found to exist.

As to Count 1, capital murder of Heather Muller, we find that the proper sentence for Jonathan D. Carr is death. Dated the 14th day of November, 2002, signed William C. Briley.

Verdict Form 1, Count 2, capital murder, Aaron

[p.10]

Sander. We, the jury, being duly sworn upon our oath make the following findings concerning the sentence for the defendant Jonathan D. Carr.

As to Count 2, capital murder of Aaron Sander, we find unanimously beyond a reasonable doubt

that the following aggravating circumstances have been proved to exist.

(1) that the defendant knowingly or purposely killed or created a great risk of death to more than one person.

(2) that the defendant committed the crime for the defendant's self or another for the purpose of receiving money or any other thing of monetary value.

(3) that the defendant committed the crime in order to avoid or prevent a lawful arrest or prosecution.

(4) that the defendant committed the crime in an especially heinous, atrocious or cruel manner.

We find unanimously beyond a reasonable doubt that the aggravating circumstances found to exist outweigh mitigating circumstances found to exist.

As to Count 2, capital murder of Aaron Sander, we find that the proper sentence for Jonathan D. Carr is death. Dated the 14th of November, 2002, signed william C. Briley.

[p.11]

Verdict Form 1, Count 3, capital murder Brad Heyka. We, the jury, being duly sworn upon our oath make the following findings concerning the sentence for the defendant Jonathan D. Carr.

As to Count 3, capital murder of Brad Heyka, we find unanimously beyond a reasonable doubt that

the following aggravating circumstances have been proved to exist.

(1) that the defendant knowingly or purposely killed or created a great risk of death to more than one person.

(2) that the defendant committed the crime for the defendant's self or another for the purpose of receiving money or any other thing of monetary value.

(3) that the defendant committed the crime in order to avoid or prevent a lawful arrest or prosecution.

(4) that the defendant committed the crime in an especially heinous, atrocious or cruel manner.

We find unanimously beyond a reasonable doubt that the aggravating circumstances found to exist outweigh the mitigating circumstances found to exist.

As to Count 3, capital murder of Brad Heyka, we find that the proper sentence for Jonathan D. Carr is death. Dated the 14th of November, 2002, signed

[p.12]

William C. Briley.

Verdict Form 1, Count 4, capital murder Jason Befort. We, the jury, being duly sworn upon our oath make the following findings concerning the sentence for the defendant Jonathan D. Carr.

As to Count 4, capital murder of Jason Befort, we find unanimously beyond a reasonable doubt

that the following aggravating circumstances have been proved to exist.

(1) that the defendant knowingly or purposely killed or created a great risk of death to more than one person. Two. That the defendant committed the crime for the defendant's self or another for the purpose of receiving money or any other thing of monetary value.

(3) That the defendant committed the crime in order to avoid or prevent a lawful arrest or prosecution.

(4) That the defendant committed the crime in an especially heinous, atrocious or cruel manner.

We find unanimously beyond a reasonable doubt that the aggravating circumstances found to exist outweigh mitigating circumstances found to exist.

As to Count 4, capital murder of Jason Befort, we find that the proper sentence for Jonathan D. Carr

[p.13]

is death. Dated the 14th day of November, 2002, signed William C. Briley.

THE COURT: Members of the Jury, I have a question I will state -- a question I will inquire of you individually for an answer to my question. the question is, was the verdict just read by the bailiff your verdict.

Juror No. 1?

JUROR NO. 1: Yes, Your Honor.

THE COURT: Juror No. 2?

JUROR NO. 2: Yes, Your Honor.

THE COURT: Juror No. 3?

JUROR NO. 3: Yes, Your Honor.

THE COURT: Juror No. 4?

JUROR NO. 4: Yes, Your Honor.

THE COURT: Juror No. 5?

JUROR NO. 5: Yes, Your Honor.

THE COURT: Juror No. 6?

JUROR NO. 6: Yes, Your Honor.

THE COURT: Juror No. 7?

JUROR NO. 7: Yes, Your Honor.

THE COURT: No. 8?

JUROR NO. 8: Yes, Your Honor.

THE COURT: Juror No. 9?

JUROR NO. 9: Yes, Your Honor.

[p.14]

THE COURT: Juror No. 10?

JUROR NO. 10: Yes, Your Honor.

THE COURT: Juror No. 11?

JUROR NO. 11: Yes, Your Honor.

THE COURT: Juror No. 12?

JUROR NO. 12: Yes, Your Honor.

THE COURT: I will accept your verdict. What I am going to do now is put you back in your jury room. I will come in there in less than five minutes and answer any questions you have of me. Then you will be released from your jury service having completed your duties here. Thank you very much for your work. Go in your jury room. I will be in there in less than five minutes. As soon as I answer any of your questions, you will be free to go.

(The jury leaves the courtroom and the following proceedings are had:)

THE COURT: The sentencing is 10:00 o'clock in the morning. Also I need any motions that will be taken up at that time. I will, as I said, answer any questions the jury has of me. We will give them their documents to take to their employers. I will inquire, Do you want to talk to the lawyers? If they do, I will have them come out here and talk to you all if you want to talk to them. If they want to

[p.15]

talk to you. If not, I will ask somebody from the Sheriff's Department to walk them to their automobiles until they are safe and off. We are in recess.

MS. FOULSTON: Excuse me, the TV will be of during all of that time.

THE COURT: Absolutely. Thank you very much.

[p.16]

STATE OF KANSAS)
)
SEDGWICK COUNTY)

CERTIFICATE

I, Connie Uphaus, a Certified Shorthand Reporter, under and by virtue of the laws of the State of Kansas, and a regularly appointed, qualified and acting Official Reporter of the Eighteenth Judicial District of the State of Kansas, do hereby certify that as such Official Reporter, I was present at and reported in machine shorthand the above and foregoing proceedings in Case Nos. 00 CR 2978 and 00 CR 2979, heard on November 14, 2002, before the Honorable Paul Clark, Judge of Division 9 of said court;

That, therefore, upon the written order dated , I personally prepared the foregoing transcript, by means of computer-aided transcription, consisting of 16 typewritten pages, and that said transcript is a true and correct transcript of my shorthand notes, all to the best of my knowledge and ability.

SIGNED, OFFICIALLY SEALED, and FILED WITH THE CLERK OF HE DISTRICT COURT, 11th Floor, this day of , 2003.

Certified Shorthand Reporter

Connie Uphaus, C.S.R.

VERDICT FORM (1)

COUNT ONE (1)
CAPITAL MURDER
HEATHER MULLER

We, the jury, being duly sworn upon our oath make the following findings concerning the sentence for the defendant Reginald D. Carr, Jr.:

As to Count One (1), Capital Murder of Heather Muller, we find unanimously beyond a reasonable doubt that the following aggravated circumstance(s) have been proved to exist:

(PLEASE INDICATE BY X IN THE BLANK SPACE)

X 1. That the defendant knowingly or purposely killed or created a great risk of death to more than one person.

X 2. That the defendant committed the crime for the defendant's self or another for the purpose of receiving money or any other thing of monetary value.

X 3. That the defendant committed the crime in order to avoid or prevent a lawful arrest or prosecution.

X 4. That the defendant committed the crime in an especially heinous, atrocious or cruel manner.

We find unanimously beyond a reasonable doubt that the aggravating circumstances found to exist outweigh mitigating circumstances found to exist.

As To Count One (1), Capital Murder of Heather Muller, we find that the proper sentence for Reginald D. Carr, Jr. is death.

Date: 14 Nov. 02 /s/William C. Briley
Presiding Juror

VERDICT FORM (2)

COUNT ONE (1)
CAPITAL MURDER
HEATHER MULLER

As to Count One (1), Capital Murder of Heather Muller, we the jury being duly sworn upon oath find that the aggravating circumstances claimed by the Plaintiff, State of Kansas, have not been proved to exist beyond a reasonable doubt.

Date: _____ _____

Presiding Juror

VERDICT FORM (3)

COUNT ONE (1)
CAPITAL MURDER
HEATHER MULLER

As to Count One (1), Capital Murder of Heather Muller, we the jury being duly sworn upon oath state that we are unable to reach a unanimous verdict sentencing the defendant, Reginald D. Carr, Jr., to death.

(PLEASE INDICATE BY X IN THE BLANK SPACE)

____ A. We are not able to agree unanimously that the evidence proves an aggravated circumstance exists.

____ B. We are not able to agree that the aggravated circumstance(s) that were proved to exist outweighs the mitigating circumstance(s) shown to exist by the evidence.

Date: _____ _____

Presiding Juror

VERDICT FORM (1)

COUNT TWO (2)
CAPITAL MURDER
AARON SANDER

We, the jury, being duly sworn upon our oath make the following findings concerning the sentence for the defendant Reginald D. Carr, Jr.:

As to Count Two (2), Capital Murder of Aaron Sander, we find unanimously beyond a reasonable doubt that the following aggravated circumstance(s) have been proved to exist:

(PLEASE INDICATE BY X IN THE BLANK SPACE)

X 1. That the defendant knowingly or purposely killed or created a great risk of death to more than one person.

X 2. That the defendant committed the crime for the defendant's self or another for the purpose of receiving money or any other thing of monetary value.

X 3. That the defendant committed the crime in order to avoid or prevent a lawful arrest or prosecution.

X 4. That the defendant committed the crime in an especially heinous, atrocious or cruel manner.

We find unanimously beyond a reasonable doubt that the aggravating circumstances found to exist outweigh mitigating circumstances found to exist.

As to Count Two (2), Capital Murder of Aaron Sander, we find that the proper sentence for Reginald D. Carr, Jr. is death.

Date: 14 Nov 02 /s/William C. Briley
Presiding Juror

VERDICT FORM (2)

COUNT TWO (2)
CAPITAL MURDER
AARON SANDER

As to Count Two (2), Capital Murder of Aaron Sander, we the jury being duly sworn upon oath find that the aggravating circumstances claimed by the Plaintiff, State of Kansas, have not been proved to exist beyond a reasonable doubt.

Date: _____ _____

Presiding Juror

VERDICT FORM (3)

COUNT TWO (2)
CAPITAL MURDER
AARON SANDER

As to Count Two (2), Capital Murder of Aaron Sander, we the jury being duly sworn upon oath state that we are unable to reach a unanimous verdict sentencing the defendant, Reginald D. Carr, Jr., to death.

(PLEASE INDICATE BY X IN THE BLANK SPACE)

____ A. We are not able to agree unanimously that the evidence proves an aggravated circumstance exists.

____ B. We are not able to agree that the aggravated circumstance(s) that were proved to exist outweighs the mitigating circumstance(s) shown to exist by the evidence.

Date: _____ _____

Presiding Juror

VERDICT FORM (1)

COUNT THREE (3)
CAPITAL MURDER
BRAD HEYKA

We, the jury, being duly sworn upon our oath make the following findings concerning the sentence for the defendant Reginald D. Carr, Jr.:

As to Count Three (3), Capital Murder of Brad Heyka, we find unanimously beyond a reasonable doubt that the following aggravated circumstance(s) have been proved to exist:

(PLEASE INDICATE BY X IN THE BLANK SPACE)

X 1. That the defendant knowingly or purposely killed or created a great risk of death to more than one person.

X 2. That the defendant committed the crime for the defendant's self or another for the purpose of receiving money or any other thing of monetary value.

X 3. That the defendant committed the crime in order to avoid or prevent a lawful arrest or prosecution.

X 4. That the defendant committed the crime in an especially heinous, atrocious or cruel manner.

We find unanimously beyond a reasonable doubt that the aggravating circumstances found to exist outweigh mitigating circumstances found to exist.

As to Count Three (3), Capital Murder of Brad Heyka, we find that the proper sentence for Reginald D. Carr, Jr. is death.

Date: 14 Nov 02 /s/William C. Briley
Presiding Juror

VERDICT FORM (2)

COUNT THREE (3)
CAPITAL MURDER
BRAD HEYKA

As to Count Three (3), Capital Murder of Brad Heyka, we the jury being duly sworn upon oath find that the aggravating circumstances claimed by the Plaintiff, State of Kansas, have not been proved to exist beyond a reasonable doubt.

Date: _____ _____
Presiding Juror

VERDICT FORM (3)

COUNT THREE (3)
CAPITAL MURDER
BRAD HEYKA

As to Count Three (3), Capital Murder of Brad Heyka, we the jury being duly sworn upon oath state that we are unable to reach a unanimous verdict sentencing the defendant, Reginald D. Carr, Jr., to death.

(PLEASE INDICATE BY X IN THE BLANK SPACE)

_____ A. We are not able to agree unanimously that the evidence proves an aggravated circumstance exists.

_____ B. We are not able to agree that the aggravated circumstance(s) that were proved to exist outweighs the mitigating circumstance(s) shown to exist by the evidence.

Date: _____ _____

Presiding Juror

VERDICT FORM (1)

COUNT FOUR (4)
CAPITAL MURDER
JASON BEFORT

We, the jury, being duly sworn upon our oath make the following findings concerning the sentence for the defendant Reginald D. Carr, Jr.:

As to Count Four (4), Capital Murder of Jason Befort, we find unanimously beyond a reasonable doubt that the following aggravated circumstance(s) have been proved to exist:

(PLEASE INDICATE BY X IN THE BLANK SPACE)

X 1. That the defendant knowingly or purposely killed or created a great risk of death to more than one person.

X 2. That the defendant committed the crime for the defendant's self or another for the purpose of receiving money or any other thing of monetary value.

X 3. That the defendant committed the crime in order to avoid or prevent a lawful arrest or prosecution.

X 4. That the defendant committed the crime in an especially heinous, atrocious or cruel manner.

We find unanimously beyond a reasonable doubt that the aggravating circumstances found to exist outweigh mitigating circumstances found to exist.

As to Count Four (4), Capital Murder of Jason Befort, we find that the proper sentence for Reginald D. Carr, Jr. is death.

Date: 14 Nov 02

/s/William C. Briley
Presiding Juror

VERDICT FORM (2)

COUNT FOUR (4)
CAPITAL MURDER
JASON BEFORT

As to Count Four (4), Capital Murder of Jason Befort, we the jury being duly sworn upon oath find that the aggravating circumstances claimed by the Plaintiff, State of Kansas, have not been proved to exist beyond a reasonable doubt.

Date: _____ _____

Presiding Juror

VERDICT FORM (3)

COUNT FOUR (4)
CAPITAL MURDER
JASON BEFORT

As to Count Four (4), Capital Murder of Jason Befort, we the jury being duly sworn upon oath state that we are unable to reach a unanimous verdict sentencing the defendant, Reginald D. Carr, Jr., to death.

(PLEASE INDICATE BY X IN THE BLANK SPACE)

____ A. We are not able to agree unanimously that the evidence proves an aggravated circumstance exists.

____ B. We are not able to agree that the aggravated circumstance(s) that were proved to exist outweighs the mitigating circumstance(s) shown to exist by the evidence.

Date: _____ _____
Presiding Juror

VERDICT FORM (1)

COUNT ONE (1)
CAPITAL MURDER
HEATHER MULLER

We, the jury, being duly sworn upon our oath make the following findings concerning the sentence for the defendant Jonathan D. Carr:

As to Count One (1), Capital Murder of Heather Muller, we find unanimously beyond a reasonable doubt that the following aggravated circumstance(s) have been proved to exist:

(PLEASE INDICATE BY X IN THE BLANK SPACE)

X 1. That the defendant knowingly or purposely killed or created a great risk of death to more than one person.

X 2. That the defendant committed the crime for the defendant's self or another for the purpose of receiving money or any other thing of monetary value.

X 3. That the defendant committed the crime in order to avoid or prevent a lawful arrest or prosecution.

X 4. That the defendant committed the crime in an especially heinous, atrocious or cruel manner.

We find unanimously beyond a reasonable doubt that the aggravating circumstances found to exist outweigh mitigating circumstances found to exist.

As To Count One (1), Capital Murder of Heather Muller, we find that the proper sentence for Jonathan D. Carr is death.

Date: 14 Nov 02 /s/William C. Briley
Presiding Juror

VERDICT FORM (2)

COUNT ONE (1)
CAPITAL MURDER
HEATHER MULLER

As to Count One (1), Capital Murder of Heather Muller, we the jury being duly sworn upon oath find that the aggravating circumstances claimed by the Plaintiff, State of Kansas, have not been proved to exist beyond a reasonable doubt.

Date: _____ _____
Presiding Juror

VERDICT FORM (3)

COUNT ONE (1)
CAPITAL MURDER
HEATHER MULLER

As to Count One (1), Capital Murder of Heather Muller, we the jury being duly sworn upon oath state that we are unable to reach a unanimous verdict sentencing the defendant, Jonathan D. Carr to death.

(PLEASE INDICATE BY X IN THE BLANK SPACE)

____ A. We are not able to agree unanimously that the evidence proves an aggravated circumstance exists.

____ B. We are not able to agree that the aggravated circumstance(s) that were proved to exist outweighs the mitigating circumstance(s) shown to exist by the evidence.

Date: _____ _____

Presiding Juror

VERDICT FORM (1)

COUNT TWO (2)
CAPITAL MURDER
AARON SANDER

We, the jury, being duly sworn upon our oath make the following findings concerning the sentence for the defendant Jonathan D. Carr:

As to Count Two (2), Capital Murder of Aaron Sander, we find unanimously beyond a reasonable doubt that the following aggravated circumstance(s) have been proved to exist:

(PLEASE INDICATE BY X IN THE BLANK SPACE)

X 1. That the defendant knowingly or purposely killed or created a great risk of death to more than one person.

X 2. That the defendant committed the crime for the defendant's self or another for the purpose of receiving money or any other thing of monetary value.

X 3. That the defendant committed the crime in order to avoid or prevent a lawful arrest or prosecution.

X 4. That the defendant committed the crime in an especially heinous, atrocious or cruel manner.

We find unanimously beyond a reasonable doubt that the aggravating circumstances found to exist outweigh mitigating circumstances found to exist.

As to Count Two (2), Capital Murder of Aaron Sander, we find that the proper sentence for Jonathan D. Carr is death.

Date: 14 Nov 02 /s/William C. Briley
Presiding Juror

VERDICT FORM (2)

COUNT TWO (2)
CAPITAL MURDER
AARON SANDER

As to Count Two (2), Capital Murder of Aaron Sander, we the jury being duly sworn upon oath find that the aggravating circumstances claimed by the Plaintiff, State of Kansas, have not been proved to exist beyond a reasonable doubt.

Date: _____ _____

Presiding Juror

VERDICT FORM (3)

COUNT TWO (2)
CAPITAL MURDER
AARON SANDER

As to Count Two (2), Capital Murder of Aaron Sander, we the jury being duly sworn upon oath state that we are unable to reach a unanimous verdict sentencing the defendant, Jonathan D. Carr to death.

(PLEASE INDICATE BY X IN THE BLANK SPACE)

____ A. We are not able to agree unanimously that the evidence proves an aggravated circumstance exists.

____ B. We are not able to agree that the aggravated circumstance(s) that were proved to exist outweighs the mitigating circumstance(s) shown to exist by the evidence.

Date: _____ _____

Presiding Juror

VERDICT FORM (1)

COUNT THREE (3)
CAPITAL MURDER
BRAD HEYKA

We, the jury, being duly sworn upon our oath make the following findings concerning the sentence for the defendant Jonathan D. Carr:

As to Count Three (3), Capital Murder of Brad Heyka, we find unanimously beyond a reasonable doubt that the following aggravated circumstance(s) have been proved to exist:

(PLEASE INDICATE BY X IN THE BLANK SPACE)

X 1. That the defendant knowingly or purposely killed or created a great risk of death to more than one person.

X 2. That the defendant committed the crime for the defendant's self or another for the purpose of receiving money or any other thing of monetary value.

X 3. That the defendant committed the crime in order to avoid or prevent a lawful arrest or prosecution.

X 4. That the defendant committed the crime in an especially heinous, atrocious or cruel manner.

We find unanimously beyond a reasonable doubt that the aggravating circumstances found to exist outweigh mitigating circumstances found to exist.

As to Count Three (3), Capital Murder of Brad Heyka, we find that the proper sentence for Jonathan D. Carr is death.

Date: 14 Nov 02 /s/William C. Briley
Presiding Juror

VERDICT FORM (2)

COUNT THREE (3)
CAPITAL MURDER
BRAD HEYKA

As to Count Three (3), Capital Murder of Brad Heyka, we the jury being duly sworn upon oath find that the aggravating circumstances claimed by the Plaintiff, State of Kansas, have not been proved to exist beyond a reasonable doubt.

Date: _____ _____

Presiding Juror

VERDICT FORM (3)

COUNT THREE (3)
CAPITAL MURDER
BRAD HEYKA

As to Count Three (3), Capital Murder of Brad Heyka, we the jury being duly sworn upon oath state that we are unable to reach a unanimous verdict sentencing the defendant, Jonathan D. Carr to death.

(PLEASE INDICATE BY X IN THE BLANK SPACE)

____ A. We are not able to agree unanimously that the evidence proves an aggravated circumstance exists.

____ B. We are not able to agree that the aggravated circumstance(s) that were proved to exist outweighs the mitigating circumstance(s) shown to exist by the evidence.

Date: _____ _____

Presiding Juror

VERDICT FORM (1)

COUNT FOUR (4)
CAPITAL MURDER
JASON BEFORT

We, the jury, being duly sworn upon our oath make the following findings concerning the sentence for the defendant Jonathan D. Carr:

As to Count Four (4), Capital Murder of Jason Befort, we find unanimously beyond a reasonable doubt that the following aggravated circumstance(s) have been proved to exist:

(PLEASE INDICATE BY X IN THE BLANK SPACE)

X 1. That the defendant knowingly or purposely killed or created a great risk of death to more than one person.

X 2. That the defendant committed the crime for the defendant's self or another for the purpose of receiving money or any other thing of monetary value.

X 3. That the defendant committed the crime in order to avoid or prevent a lawful arrest or prosecution.

X 4. That the defendant committed the crime in an especially heinous, atrocious or cruel manner.

We find unanimously beyond a reasonable doubt that the aggravating circumstances found to exist outweigh mitigating circumstances found to exist.

As to Count Four (4), Capital Murder of Jason Befort, we find that the proper sentence for Jonathan D. Carr is death.

Date: 14 Nov 02 /s/William C. Briley
Presiding Juror

VERDICT FORM (2)

COUNT FOUR (4)
CAPITAL MURDER
JASON BEFORT

As to Count Four (4), Capital Murder of Jason Befort, we the jury being duly sworn upon oath find that the aggravating circumstances claimed by the Plaintiff, State of Kansas, have not been proved to exist beyond a reasonable doubt.

Date: _____ _____

Presiding Juror

VERDICT FORM (3)

COUNT FOUR (4)
CAPITAL MURDER
JASON BEFORT

As to Count Four (4), Capital Murder of Jason Befort, we the jury being duly sworn upon oath state that we are unable to reach a unanimous verdict sentencing the defendant, Jonathan D. Carr to death.

(PLEASE INDICATE BY X IN THE BLANK SPACE)

_____ A. We are not able to agree unanimously that the evidence proves an aggravated circumstance exists.

_____ B. We are not able to agree that the aggravated circumstance(s) that were proved to exist outweighs the mitigating circumstance(s) shown to exist by the evidence.

Date: _____ _____

Presiding Juror